

Hon Speaker,
You may approve
for tabling.

[Signature]
12/9

Approved for tabling.

SNA
14/9/23



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT- SECOND SESSION (2023)

THE NATIONAL ASSEMBLY

COMMITTEE ON DELEGATED LEGISLATION

REPORT ON THE UNIVERSITIES REGULATIONS, 2023

(LN. No.56 of 2023)

PARLIAMENT
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SEPTEMBER, 2023	
THE NATIONAL ASSEMBLY PAPER TAD	
DATE:	14 SEP 2023 Thursday
TABLED BY:	Chairperson, Delegated Legislation Hon. Samuel Chepkong'o, MP
CLERK AT THE TABLE:	Tracy Chebet

The Directorate of Audit, Appropriations & Other Select Committees
The National Assembly
Parliament Buildings
NAIROBI.

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ABBREVIATIONS

LN	Legal Notice
RMA	Regulatory Making Authority
SI	Statutory Instruments
SO	Standing Order

CHAIRPERSON'S FOREWORD

The Universities Regulations, 2023 (“the Regulations”) are made *vide LN No. 56 of 2023*, pursuant to powers conferred on the Cabinet Secretary for Education under section 70 of the University Act, (*No. 42 of 2012*).

The Regulations were published in the Gazette as *LN. No. 56 of 2023* on 2nd May, 2023, received by the Clerk of the National Assembly on 8th May, 2023 and were laid on the table of the House on 6th June, 2023, being the fourth sitting day since publication hence were within the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

The Regulations seek *inter alia*, to provide for other modes of teaching and delivery such as open, Distance e-learning, taking into account the effect of COVID-19, Open University of Kenya, A framework for collaboration between; local Universities and local Tertiary Institutions, better carrying out of activities of Specialized Degree Awarding Institutions and better direction and Quality Assurance of activities in Universities in Kenya such as institutionalizing quality audit in the University Statutory Instruments Act, 2013.

However, the Regulations fall short of complying with the minimum threshold set out in Articles 10, 118 and 259 (11) of the Constitution as read with sections 5, 5A and 13 of Statutory Instruments Act, 2013, section 70 of the Universities Act, 2012, the Interpretations and General provisions Act, (*Cap 2 Laws of Kenya*) for failure to conduct sufficient public participation, omitting to subject the Regulations to a regulatory impact assessment, inclusion of provisions that are *ultra vires* the enabling provisions of the Universities Act, 2012, and blatant contravention of section 13 of the Statutory Instruments Act, 2013 and on other grounds set out in detail in this report.

Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the Regulation-Making Authorities before making its decision, the Committee held a meeting with Cabinet Secretary for Education on 29th June, 2023 within Parliament Buildings to deliberate on the Universities Regulations, 2023.

The Committee was cognizant of the provisions of the Report on the Presidential Task Force recommendations regarding University Education and sought to urge the Ministry to realign the Regulations with that report, as well as the issues raised by the Committee.

Having examined the Universities Regulations, 2023, *Legal Notice No. 56 of 2023* in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), the University Act, (*No. 42 of 2012*), the Committee recommends that the House **Annuls in entirety** the Universities, 2023, (LN. No. 56 of 2023) for non-compliance with the relevant Statutes, and to give the Ministry an opportunity to align the Regulations with the Constitution, the relevant Statutes and the Report of the Presidential Task Force on the recommendations on University Education.

I wish to most sincerely thank the Speaker and the Office of the Clerk of the National Assembly for the invaluable support accorded to the Committee in the discharge of its mandate.

On behalf of the Members of the Select Committee on Delegated Legislation and pursuant to Standing Order 210 (4) (b), it is my pleasure and duty to present to the House, the **Committee's Report on the Consideration of the Universities Regulations, 2023** (*LN. No. 56 of 2023*).

HON. CHEPKONGA KIPRONO SAMUEL, CBS, MP

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Delegated Legislation is established pursuant to *Standing Order No. 210* and is mandated to consider statutory instruments submitted to Parliament for consideration. The Committee is expected to consider in respect of any statutory instrument, whether it is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws.
2. During the scrutiny, the Committee is guided by the principles of good governance, rule of law considers whether the instrument-
 - a. is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b. infringes on fundamental rights and freedoms of the public;
 - c. contains a matter which in the option of the Committee should more properly be dealt with in an Act of the Parliament;
 - d. contains imposition of taxation;
 - e. directly or indirectly bars the jurisdiction of the court;
 - f. gives retrospective effect to any of the provision in respect to which the Constitution does not expressly give any such power;
 - g. it involves expenditure from the consolidated fund or other public revenues;
 - h. is defective in its drafting or for any reason form or part of the statutory instrument calls for any elucidation;
 - i. appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
 - j. appears to have had unjustifiable delay in its publication or laying before Parliament;
 - k. makes rights, liberties or obligations unduly dependent upon non-renewable decisions;
 - l. makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - m. inappropriately delegates legislative powers;
 - n. imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o. appears for any reason to infringe on the rule of law;
 - p. inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q. accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises –

Hon. Chepkonga Kiprono Samuel, CBS, M.P. (Chairperson)
Ainabkoi Constituency
UDA

Hon. Githinji Robert Gichimu, M.P. (Vice Chairperson)
Gichugu Constituency
UDA

COMMITTEE MEMBERS

Hon. Mbui Robert, CBS, M.P
WDM-KENYA
Kathiani Constituency

Hon. Chebor, Paul Kibet, M.P
UDA
Rongai Constituency

Hon. Maj (Rtd) Dekow Barrow Mohamed,
M.P
UDA
Garrisa Township Constituency

Hon. Yakub Adow Kuno, M.P
UPIA
Bura Constituency

Hon. Julius Lekakeny Ole Sunkuli, EGH,
EBS, M.P.
KANU
Kilgoris Constituency

Hon. (Maj) (Rtd) Abdullahi, Bashir Sheikh
,M.P.
UDM
Mandera North Constituency

Hon. Kamene Joyce, M.P
WDM-KENYA
Machakos County

Hon. Mwirigi John Paul, M.P.
UDA
Igembe South Constituency

Hon. Onchoke, Mamwacha Charles, M.P.
UPA
Bonchari Constituency

Hon. Odoyo, Jared Okello, M.P.
ODM
Nyando Constituency

Hon Kimaiyo, Gideon Kipkoech, M.P.
UDA
Keiyo South Constituency

Hon. Chepkorir Linet, M.P.
UDA
Bomet County

Hon. Komingoi, Kibet Kirui, M.P.
UDA
Bureti Constituency

Hon. Munyoro Joseph Kamau, M.P
UDA
Kigumo Constituency

Hon. Ruku, Geoffrey Kariuki Kiringa, M.P.
DP

Mbeere North Constituency

Hon. Lenguris Pauline, M.P.
UDA

Samburu County

Hon. Mwale, Nicholas S. Tindi M.P.
ODM

Butere Constituency

Hon Mnyazi Amina Laura, MP.
ODM

Malindi Constituency

Hon. Mugabe Innocent Maino, M.P.
ODM

Lukuyani Constituency

1.3 Committee Secretariat

4. The secretariat facilitating the Committee comprises –

Ms. Esther Nginyo
Clerk Assistant I (Team Leader)

Mr. Dima Dima
Principal Legal Counsel I

Mr. Jacknorine Buleemi
Clerk Assistant III

Ms. Winny Otieno
Clerk Assistant III

Mr. Brian Langwech
Clerk Assistant III

Mr Peter Barasa
Legal Counsel II

Mr. Daniel Ominde
Research Officer III

Mrs. Sheila Chebotibin
Serjeant at Arms

Mr. Charles Ayari
Audio Officer

2.0 CONSIDERATION OF THE UNIVERSITIES REGULATIONS (LEGAL NOTICE NO. 56 OF 2023)

2.1 Introduction

5. The Universities Regulations, 2023, (*Legal Notice No. 56 of 2023*) were made pursuant to powers conferred on the Cabinet Secretary for Education under section 70 of the University Act, (*No. 42 of 2012*) hence, is a statutory instrument within the meaning of section 2 of the Statutory Instruments Act (*No 23 of 2013*).
6. The Regulations were published in the Gazette as LN No. 56 of 2023 on 2nd May, 2023, received by the Clerk of the National Assembly on 8th May, 2023 and were laid on the table of the House on 6th June, 2023, hence were within the statutory timelines contemplated under section 11(1) of the Statutory Instruments Act, 2013.
7. Pursuant to section 16 of the Statutory Instruments Act, 2013 which requires the Committee to confer with the regulation-making authorities before making its decision, the Committee held a meeting with Cabinet Secretary Ministry of Education on 29th June, 2023 within Parliament Buildings to deliberate on the Universities Regulations, 2023.
8. The purpose of the Regulations is to:
 - a. enhance the current Regulations taking into account the various amendments to the Universities Act, 2012;
 - b. provide for other modes of teaching and delivery such as open, distance and eLearning, taking into account the effects of COVID-19;
 - c. provide for the establishment of the Open University of Kenya;
 - d. provide for a framework for collaborations between; local universities and local tertiary institutions, and between a local university and another local university in the award of academic degrees in Kenya;
 - e. provide for the better carrying out of activities of specialized degree awarding institutions; and
 - f. provide for the better direction and quality assurance of activities in universities in Kenya such as institutionalizing quality audit in the Universities.

2.2 Summary of the Universities Regulations, 2023, Legal Notice No. 56 of 2023

9. **Part I** of the Regulations provide for preliminary provisions including the citation, interpretation of the various terminologies used in the text of the regulations and the scope to be covered in the process of implementation of the regulations.
10. **Part II** of the Regulations provide for eligibility and application procedure of establishing a university, inspection of universities operating under a letter of interim authority and procedures for revocation of the said letter, application for award of charter, accreditation process for award of charter, requirement for accreditation report, grant of charter, mergers and acquisition, change of sponsorship of a university, withdrawal of a

sponsor of a university, accreditation of foreign universities, institutionalization of quality assurance, institutional quality audit, impromptu quality audit, inspection or investigation; promotion of quality teaching research, industry linkages, innovation and community, university data and information and university information system.

11. **Part III** of the Regulations provide for eligibility for establishment of a technical university and conditions for declaration, procedure for declaration and inspection of proposed technical universities. It further provides for consideration of technical inspection reports, declaration quality audit and privileges of a technical university.
12. **Part IV** of the Regulations provide for establishment of specialized degree awarding institutions, criteria of establishing the same, accreditation process, consideration of the inspection report, audit and declaration of a specialized degree awarding or research institution.
13. **Part V** of the Regulations provide for establishment of a constituent college. It further provides for application, consideration, operation, tenure and revocation of legal order establishing a constituent college.
14. **Part VI** of the Regulations provide for the establishment of a university campus. It further provides for the process of application, consideration for application, operation and tenure the process for application to establish an open, distance and E-learning centre.
15. **Part VII** of the Regulations provide for the process of accreditation or approval of academic programmes. It further provides for the engagement of professional bodies in accreditation or approval of academic programmes, conditions for credit accumulation and requirement for universities to develop internal quality assurance for academic programmes.
16. **Part VIII** of the Regulations provide for the process of application for foreign universities intending to collaborate with a local university or institution authorized to operate in Kenya. It further provides for obligations on both foreign and local universities entering into a collaboration agreement, process of approval of collaboration, maintenance of register of universities granted authority to collaborate and revocation of authority.
17. **Part IX** of the Regulations provide for the process of application for a local University intending to collaborate with a local university or institution authorized to operate in Kenya. It further provides for a collaboration review committee, the power of the committee to grant authority to collaborate, publication of grant and revocation of the authority to collaborate.
18. **Part X** of the Regulations provide for application for license to operate student recruitment agencies and activities of foreign universities. The same provides for conditions for operating a student recruitment agency and monitoring student recruitment agencies. It further provides

for the effects of the license; obligation of an agency and maintenance of student recruitment agencies registered by the commission.

19. **Part XI** of the Regulations provides for recognition and equation of degrees, diplomas and certificates conferred or awarded by a foreign university and institution. This further provides for principles of recognition and equation, evaluation of foreign qualification and criteria for recognition and equation of qualification.
20. **Part XII** of the Regulations provides for general provisions in terms of fees, penalties, review and appeals, transitional arrangements, continuation of time, preparation of standards and guidelines and declaration of standards and guidelines. Further the regulation provides for revocation of legal notice no. 76 of 2014.
21. **The First Schedule** to the Regulations provides for governance and management of a university.

2.3 Legislative Context

22. Section 70 of the Universities Act, 2012 grants the Cabinet Secretary for Education the power to make Regulations for the better carrying out of the objects of and purpose of the Universities Act, 2012. Therefore, the Universities Regulations, 2023 have been made towards that context.

2.4 Policy Background

23. The Universities Act, 2012 was enacted on 13th December, 2012 and came into operation on 14th December, 2012. The Act establishes the Commission for University Education as the successor to the Commission for Higher Education. The Commission advises the Cabinet Secretary for Education on the policy relating to university education.
24. The Universities Act, 2012 has undergone various amendments without corresponding changes to the subsidiary legislation, and in particular the Universities Regulations. The Act on its own, however, is not sufficient since it does not provide the form, operational procedures and guidelines on all matters relating to the mandate of the Commission. Regulations are therefore necessary to govern the implementation of the said mandate.
25. It is considered that if the Universities Regulations, 2023 were to be made in a way that conforms to the constitutional and statutory requirements. They would provide a framework to assist in the proper and better management of universities in Kenya and in particular, it would make Kenyan universities and graduates to remain competitive internationally.

3.0 COMMITTEE OBSERVATIONS

26. Having examined the Universities Regulations, 2023 in line with the Constitution of Kenya 2010, the Interpretation and General Provisions Act (Cap. 2) Laws of Kenya, the University Act, (No. 42 of 2012) and the Statutory Instruments Act (No. 23 of 2013) the Committee made the following observations –

3.1 Statutory Timelines

27. **THAT**, the Regulations were published in the Gazette as LN No. 56 of 2023 on 2nd May, 2023, received by the Clerk of the National Assembly on 8th June, 2023 and were laid on the table of the House on 6th June, 2023 being the fourth sitting day since publication, hence were within the Statutory timelines contemplated under section 11(1) of the Statutory Instruments Act.

3.2 Public Participation

28. Articles 10 and 118 of the Constitution requires that the public be involved in any legislative agenda by public institutions, and is buttressed by section 5, 5A and the schedule to the Statutory Instruments Act, 2013 which requires that consultation be made with the persons to be affected by the Regulations.

29. Section 70 of the Universities Act, 2012 mandates the Cabinet Secretary to make Regulations on specific areas **in consultation with the stakeholders**. Article 259(11) of the Constitution provides that *if a function or power conferred on a person under the Constitution (or a law) is exercisable on that person ...only ...on consultation with another person, the function may be performed or power exercised only...after that consultation.*

30. The Ministry, being the Regulation Making-Authority, did not demonstrate to the Committee sufficient evidence of having conducted public participation or consultations with any stakeholders, or at all. This is in contravention of Articles 10, 118 and 259(11) of the Constitution and sections 5, 5A and the schedule to sections 5,5A and 13 of Statutory Instruments Act, 2013, section 70 of the Universities Act, 2012.

3.3 Regulatory Impact Statement

31. **THAT**, section 6 of the Statutory Instruments Act, 2013 requires that a Regulatory Impact Assessment be conducted where the proposed regulation is likely to impose significant costs on the community or part of the community. The very nature of the Universities Regulations involves matters relating to: -

- a. establishment of public and private universities, technical universities, open universities, university campuses and university constituent colleges;
- b. issuance, revocation and variation of University Charters;

- c. implementation of differentiated unit costs, and discipline differentiated remuneration the academic year for the universities;
 - d. continuous accreditation and quality assurance, including programme accreditation;
 - e. procedure for the revoking a Letter of Interim Authority, varying or revoking a Charter and for winding up of universities; and
 - f. registration of agents of foreign universities.
 - g. procedure for approval of academic programmes by the Commission;
 - h. procedure for recognizing and equating degrees, diplomas and certificates conferred by foreign universities.
 - i. criteria for evaluating internal tools developed by universities for the purpose of assessing quality assurance.
32. **THAT**, the above matters impose direct and significant costs on the general public, and which therefore, attracts the requirement of a Regulatory Impact assessment and a statement to that effect. This was neither conducted nor demonstrated to the Committee.

3.4 Inappropriate delegation of Legislative powers contrary to section 13(m) of the Statutory Instruments Act and section 70 of the Universities Act, 2012.

33. **Section 13(m)** of the Statutory Instruments Act, 2013 requires the Committee to consider *inter alia*, if the person to whom power is delegated to make regulations inappropriately delegates legislative powers. The Committee took note with concern that the Cabinet Secretary has in Regulation 100, inappropriately delegated legislative powers to the Commission to make guidelines and to formulate standards on a raft of nineteen issues which are very pertinent such as; promotion of staff/ lecturers which ought to be a preserve of labour laws, and not to be dealt with under further sub-delegated powers or legislation.
34. Guidelines are defined as “statutory instruments” under section 2 of the Statutory Instruments Act, 2013; hence, a further sub-delegation of legislative authority to the Commission to make guidelines, which by themselves have a force of law, would contravene Article 94 (5) and (6) of the Constitution and sections 13(a) and (m) of the Statutory Instruments Act, 2013 and would be *ultra vires* section 70 of the Universities Act, 2012.
35. The Committee further noted that the areas on which the Ministry proposes the Commission to formulate guidelines on, under Regulation 100, are important, pertinent and touch on the very core of universities administration and ought not to be regulated under sub-delegated authority or legislation.

3.5 Non-conformity to the Parent Act contrary to section 13(a) of the Statutory Instruments Act

36. While the Universities Act requires the Cabinet Secretary to make Regulations on the procedures for approval of academic programmes by the Commission; procedure for recognizing and equating degrees, diplomas and certificates conferred by foreign universities and criteria for evaluating internal tools developed by universities for the purpose of

assessing quality assurance, a detailed analysis of the Regulations does not outline any such procedures hence contravening both sections 13(a) of the Statutory Instruments Act, 2013 which requires that Regulations to conform to the Act under which it is made and section 70 of the Universities Act, (No. 42 of 2012).

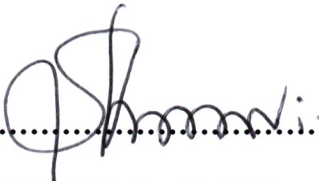
3.6 Conferring with the Regulation making Authority pursuant to section 16 of the Statutory Instruments Act.

37. Section 16 of Statutory Instruments Act, 2013 requires the Committee to confer with the regulation making authority before making its decision while Section 13(q) of the Act, requires the Committee while scrutinizing any set of regulations, to consider any other matter that the committee deems fit and proper to examine. At its consultative meeting with the Ministry on the 29th June, 2023, the Committee highlighted the following issues-

- a. That there was a need for review of Regulation 97(c). It was the proposal of the Committee that instead of the Regulations being read “as the Cabinet Secretary may give such orders”, the Regulations should be couched in a mandatory tone to read “the Cabinet Secretary **shall** issue such orders.”
- b. The Committee observed that Regulation 98 on transitional arrangement was not clear on timelines. It was proposed that the same should provide for a transition period of six months from the time of coming into operation of the regulations to allow institutions to comply.
- c. On the issue of revocation of the interim letter of authority and charter, the Committee observed that the same lacked the provision on issuance of notice to revoke, and as such the same offends the right to fair administrative action.
- d. The Regulations are not clear on the body that is responsible for the equation of degrees offered by foreign universities as the same appeared to be a function of Kenya National Qualifications Authority.
- e. The Committee observed that the definition of “private universities” as “a university which is not established or maintained out of public funds. “may operate to block students who are studying in private universities from accessing or benefit from bursaries offered at the constituency level, hence infringing on their Constitutional rights to Education. The Committee sought clarity on the definition of private university.
- f. The Committee raised issues with compliance with Regulation 56 (2) where it was concerned with the timelines within which a campus is to comply upon the Regulations coming into force.
- g. The Regulations do not create penalties for acts committed in contravention of the regulations. The Committee further sought clarification as to which penalties the Regulations Making Authority were cross-referencing to the University Act, (No. 42 of 2012.)
- h. The Committee proposed that Regulations 93 should be clear on the timeline within which evaluation of application made for recognition and equation of foreign degrees, diplomas and certificates conferred by foreign universities.
- i. The Committee was cognizant of the provisions of the Report on the Presidential Task Force recommendations regarding University Education and sought to guide the Ministry to realign the Regulations with the report and the issues raised by the Committee.

4.0 COMMITTEE RECOMMENDATION

38. Having examined the Universities Regulations, 2023, *Legal Notice No. 56 of 2023* in accordance with the Constitution, the Interpretations and General Provisions Act (*Cap 2*), the Statutory Instruments Act (*No 23 of 2013*), the University Act, (*No. 42 of 2012*), the Committee recommends that the House **Annuls in entirety** the Universities, 2023, (LN. No. 56 of 2023) for non-compliance with the relevant Statutes, and to give the Ministry an opportunity to align the Regulations with the Constitution, the relevant Statutes and the Report of the Presidential Task Force on the recommendations on University Education.

Signed..........

Date.....13/09/2023.....

**THE HON. CHEPKONGA SAMUEL KIPRONO, CBS, MP
(CHAIRPERSON)**

ANNEXURE

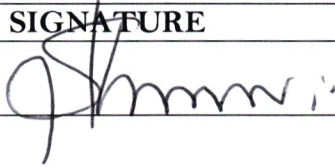

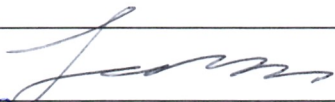

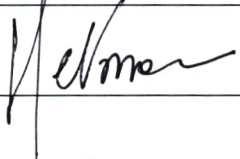
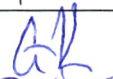
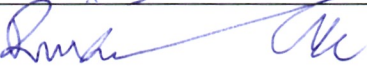

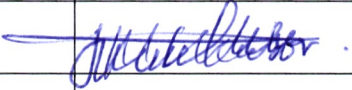
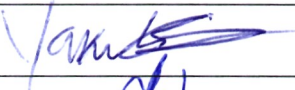

- a) Committee Minutes
- b) Adoption list
- c) Copy of Legal Notice 56, The Universities Regulations, 2023, under the Universities Act (No. 42 of 2012)

COMMITTEE ON DELEGATED LEGISLATION ADOPTION LIST

DATE: 24/08/2023 VENUE: SMALL DINING STARTING TIME: 10:00 AM.

ENDING TIME:

AGENDA: ADOPTION OF REPORT ON THE UNIVERSITIES REGULATIONS, 2023

	NAME	SIGNATURE
1.	The Hon. Chepkonga Kiprono Samuel, CBS, M.P, Chairperson	
2.	The Hon. Githinji, Robert Gichumi, M.P. Vice-Chairperson	
3.	The Hon. Mbui, Robert, CBS, M.P.	
4.	The Hon. Sunkuli Julius Lekakeny, EGH,EBS,MP	
5.	The Hon. Maj. (Rtd) Abdullahi Bashir Sheikh, M.P.	
6.	The Hon. Mwirigi, John Paul, M.P.	
7.	The Hon. Kamene, Joyce, M.P.	
8.	The Hon. Mwale, Nicholas S. Tindi, M.P.	
9.	The Hon. Odoyo, Jared Okello, M.P.	
10.	The Hon. Komingoi, Kibet Kirui, M.P.	
11.	The Hon. Maj. (Rtd.) Dekow Barrow Mohamed, M.P.	
12.	The Hon. Munyoro, Joseph Kamau, M.P.	
13.	The Hon, Kimaiyo, Gideon Kipkoech, M.P.	
14.	The Hon. Ruku, Geoffrey Kariuki Kiringa, M.P.	
15.	The Hon. Chepkorir, Linet, M.P.	
16.	The Hon. Chebor, Paul, M.P.	
17.	The Hon. Lenguris, Pauline, M.P.	
18.	The Hon. Mamwacha Onchoke Charles, M.P.	
19.	The Hon. Yakub, Adow Kuno, M.P.	
20.	The Hon. Mnyazi, Amina Laura, M.P.	

21.	The Hon. Mugabe, Innocent Maino, M.P.	
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MINUTES OF THE 49TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 24TH AUGUST, 2023 IN THE SMALL DINING ROOM, NEW WING, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. **The Hon Samuel Kiprono Chepkonga, CBS, M.P., Chairperson**
2. The Hon. Jared Okello Odoyo M.P.
3. The Hon. Joseph Kamau Munyoro, M.P.
4. The Hon. Kibet Kirui Komingoi, M.P.
5. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
6. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP
7. The Hon. Yakub Adow Kuno, M.P
8. The Hon. Linet Chepkorir M.P.

APOLOGIES

1. **The Hon. Robert Gichimu Githinji, M.P., Vice Chairperson**
2. The Hon. Robert Mbui, CBS, M.P
3. The Hon. Nicholas S. Tindi Mwale, M.P.
4. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP
5. The Hon. Joyce Kamene, M.P
6. The Hon. Onchoke Charles Mamwacha. M.P
7. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
8. The Hon. Gideon Kipkoech Kimaiyo, M.P
9. The Hon. Paul Chebor, M.P.
10. The Hon. Innocent Maino Mugabe, M.P.
11. The Hon. Laura Amina Mnyazi, M.P.
12. The Hon. Pauline Lenguris, M.P

SECRETARIAT

- | | | |
|---------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Wilson Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms. Winny Otieno | - | Clerk Assistant III |
| 5. Mr. Jacknorine Buleemi | - | Clerk Assistant III |
| 6. Ms. Fiona Wanjiru | - | Legal Counsel II |
| 7. Mr. Samwel Leparachao | - | Serjeant-At-Arms. |
| 8. Mr. Charles Ayari | - | Audio Officer |
| 9. Mr. Valerian Pascal | - | Hansard Reporter |

IN ATTENDANCE

THE MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS

- | | | |
|-----------------------|---|---|
| 1. Mr. Elijah Mwangi | - | Principal Secretary State Department for Mining |
| 2. Mr. Muhia Kagwi | - | P.A to P.S |
| 3. Mr. Paul Mirie | - | Director Planning |
| 4. Ms. Patricia Mabil | - | Director Legal |
| 5. Mr. Edward Omito | - | Senior Geologist |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of previous minutes
5. Matters Arising
6. **Briefing by the Cabinet Secretary for Mining, Blue Economy and Maritime Affairs regarding the Mining (Gemstone Identification and Value Addition) (Fees) Regulations, 2023**
7. **Briefing by the Cabinet Secretary Ministry of Education regarding the Universities Regulations, 2023**
8. Adjournment.

MIN. DAA&OSC/CDL/328/2023

PRELIMINARIES

The Chairperson called the Meeting to order at 10:20 a.m. after which prayers were said Hon. Joseph Kamau Munyoro, M.P. The Chairperson then welcomed all present to the meeting with a round of introductions.

MIN. DAA&OSC/CDL/329/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP and seconded by Hon. Ruku Geoffrey Kariuki Kiringa, M.P.

MIN. DAA&OSC/CDL/330/023

CONFIRMATION OF MINUTES

Minutes of the 45th sitting that was held on 9th August, 2023, were confirmed as true records of the deliberations as was proposed by Hon. Yakub Adow Kuno, M.P. and seconded by Hon. Kibet Kirui Komingoi, M.P.

Minutes of the 46th sitting that was held on 11th August, 2023, were confirmed as true records of the deliberations as was proposed by Hon. Joseph Kamau Munyoro, M.P. and seconded by Hon. Kibet Kirui Komingoi, M.P.

Minutes of the 47th sitting that was held on 11th August, 2023, were confirmed as true records of the deliberations as was proposed by Hon. Joseph Kamau Munyoro, M.P. and seconded by Hon. Ruku Geoffrey Kariuki Kiringa, M.P.

Minutes of the 48th sitting that was held on 12th August, 2023, were confirmed as true records of the deliberations as was proposed by Hon. Kibet Kirui Komingoi, M.P. and seconded by Hon. Yakub Adow Kuno, M.P.

Minutes of the 1st Joint sitting between the Committee on Delegated Legislation, Committee on Justice and Legal Affairs and the Committee on Defence, Intelligence and Foreign Relations that was held on 22nd August, 2023, were confirmed as true records of the deliberations as was proposed by Hon. Kibet Kirui Komingoi, M.P. and seconded by Hon. Yakub Adow Kuno, M.P.

MIN.DAA&OSC/CDL/331/2023

MATTERS ARISING

No matters arose under this Agenda item.

MIN. DAA&OSC/CDL/332/2023

**BRIEFING BY THE PRINCIPAL SECRETARY
STATE DEPARTMENT FOR MINING
REGARDING THE MINING (GEMSTONE
IDENTIFICATION AND VALUE ADDITION)
(FEES) REGULATIONS, 2023**

Mr. Elijah Mwangi, the Principal Secretary State Department for Mining, briefed the Committee on the draft Mining (Gemstone Identification and Value Addition) (Fees) Regulations, 2023 as follows;

- i) That the State Department had taken into consideration the comments and recommendations as captured in **MIN.DAA&OSC/CDL/254/2023**. The issues were addressed and captured in the new Draft Regulations. They are;
 - a) Definition of terms like gabbing, tumbling, faceting and sawing. The terms had been captured and defined in Regulation 3.
 - b) The Committee had sought a clarification on the illegal mining and the measures the Ministry was putting in place to curb the menace. The PS indicated that the moratorium that was in place since 2019 debarring issuance of mining permits, would be lifted upon requisite reforms in the sector.
 - c) The Committed had indicated that the Regulations shouldn't be regional based as had been captured in the Regulations. The PS indicated the in the new draft, the word 'Voi Gemstone' had been deleted and left open.
 - d) On the issue of public participation that the Committee had highlighted before, the PS presented that there was already a notification in circulation indicating that the Ministry would be conducting an extensive public participation in all the regions in this country from 4th to 13th September, 2023.

- ii) Under Regulation 4, the Ministry had a schedule that indicated the fees chargeable on identification and value addition of the gemstone. The gemstones were categorized as follows;
 - a) Top Gemstone that included: Corundum, Tsavorite, Tanzanite/Zoisite, Spinel, Emerald, Zircon, Demantoid and Alexandrite would attract a fee of 0.1 – 0.5ct 500 Ksh per piece, 0.5 – 2.9ct 500 Ksh per piece, 3 – 4ct 1000 Ksh per piece and above 4ct 2000 per piece.
 - b) Semi Gemstone that included: Aquamarine, Tourmaline, Rhodolite, Pyrope, Quartz, Spessartite, Malaya-garnet, Iolite, Hessonite and Change Color garnet would attract a fee 0.1 – 2.9ct 300 Ksh, 3-4ct 500 Ksh per piece and above 4ct 1000 Ksh per piece.
 - c) Tumbling. Which included building material for bead work, cabochon material would be charged 2500 Ksh per kg.
 - d) Gabbing which included material using capping machine would be charged 500 Ksh per piece.
- ii) The Committee urged the Ministry to provide for an enforcement mechanism in the Regulations by cross referencing to the Parent Act.
- iii) The Regulations should also provide for cancellation of licenses and also the term of the licence.
- iv) The Ministry was directed to withdraw the earlier Regulations and publish a revocation of the same.
- v) The Ministry was also directed to expedite the process of finalizing on draft Mining (Gemstone Identification and Value Addition) (Fees) Regulations, 2023 and submit them to the National Assembly for consideration by the Committee.

MIN. DAA&OSC/CDL/333/2023

**BRIEFING BY THE CABINET SECRETARY
MINISTRY OF EDUCATION REGARDING
THE UNIVERSITIES REGULATIONS, 2023**

The Cabinet Secretary, Ministry of Education, vide letter reference: MOE/SDHER/HRM/COM/14/7 dated 23rd August, 2023, conveyed an apology to the Committee that he wouldn't make it to appear before the Committee due to exigencies of duty.

Since the Universities Regulations, 2023 were time bound, the Committee adopted the report proposing to annul the Universities Regulations, 2023 as was proposed by Hon. Linet Chepkorir M.P. and seconded by Hon. Kibet Kirui Komingoi, M.P.


MIN. DAA&OSC/CDL/334/2023 ANY OTHER BUSINESS

The Committee had been scheduled to travel to Mombasa for a retreat on 24th August, 2023, for a pre-publication scrutiny of the Draft Refugees Regulations, 2023, however, the Ministry of Interior and National Administration had indicated that they could not secure a venue as all the hotels were fully booked during the proposed dates. However, the Ministry requested that the

meeting be rescheduled to 30th August to 2nd September, 2023 in Mombasa County at a venue to be disclosed later. The Committee acceded to this request.

MIN. DAA&OSC/CDL/335/2023 ADJOURNMENT

There being no any other business, the meeting was adjourned at Twenty Minutes past Twelve Noon.

SIGNED:.....

**THE HON. SAMUEL CHEPKONGA, CBS. M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION**

DATE:13/09/2023.....

MINUTES OF THE 44TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON TUESDAY, 8TH AUGUST, 2023 IN THE SMALL DINING, NEW WING, MAIN PARLIAMENT BUILDING AT 10:00 AM.

PRESENT

1. **The Hon Samuel Kiprono Chepkonga, CBS, M.P., Chairperson**
2. The Hon. Robert Mbui, CBS, M.P.
3. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP
4. The Hon. Kibet Kirui Kimingoi, M.P.
5. The Hon. Onchoke Charles Mamwacha. M.P.
6. The Hon. Gideon Kipkoech Kimaiyo, M.P.
7. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, M.P.
8. The Hon. Pauline Lenguris, M.P.
9. The Hon. Yakub Adow Kuno, M.P.
10. The Hon. Innocent Maino Mugabe, M.P.

APOLOGIES

1. The Hon. Robert Gichimu Githinji, M.P., Vice Chairperson
2. The Hon. Nicholas S. Tindi Mwale, M.P.
3. The Hon. John Paul Mwirigi, M.P.
4. The Hon. Jared Okello Odoyo M.P.
5. The Hon. Joyce Kamene, M.P
6. The Hon. Joseph Kamau Munyoro, M.P.
7. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
8. The Hon. Linet Chepkorir M.P.
9. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
10. The Hon. Laura Amina Mnyazi, M.P.
11. The Hon. Paul Chebor, M.P.

SECRETARIAT

- | | | |
|---------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Wilson Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Ms. Winny Otieno | - | Clerk Assistant III |
| 5. Mr. Jacknorine Buleemi | - | Clerk Assistant III |
| 6. Mr. Peter Barasa | - | Legal Counsel II |
| 7. Mr. Daniel Ominde | - | Research Officer III |
| 8. Mr. Samuel Leparachao | - | Sergeant-At-Arms. |
| 9. Mr. Charles Ayari | - | Audio Officer |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of previous minutes
5. Matters Arising
6. **Briefing by the Cabinet Secretary Ministry of Education on the Universities Regulations, 2023.**
7. Any Other Business; and
8. Adjournment.

MIN. DAA&OSC/CDL/293/2023

PRELIMINARIES

The Chairperson called the Meeting to order at 10:35 a.m. after which prayers were said.

MIN. DAA&OSC/CDL/294/2023

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by Hon. Yakub Adow Kuno, M.P. seconded by the Hon. Onchoke Charles Mamwacha, M.P.

MIN. DAA&OSC/CDL/295/295/023

CONFIRMATION OF MINUTES

Minutes of the 42nd Sitting that was held on Tuesday, 1st August, 2023, were confirmed as true records of the deliberations as proposed by the Hon. Onchoke Charles Mamwacha. M.P. and seconded by the Hon. Yakub Adow Kuno, M.P

Minutes of the 43rd Sitting that was held on Thursday, 3rd August, 2023, were confirmed as a true record of the deliberations as proposed by the Hon. Kibet Kirui Kimingoi, M.P. and seconded by the Hon. Onchoke Charles Mamwacha. M.P

MIN.DAA&OSC/CDL/296/2023

MATTERS ARISING

No matters arose under this Agenda item.

MIN. DAA&OSC/CDL/297/2023

BRIEFING BY THE CABINET SECRETARY MINISTRY OF EDUCATION ON THE UNIVERSITY REGULATIONS, 2023.

The Cabinet Secretary Vide letter Ref. No. MoE/SDHER/HRM/CON/14/7 informed the Committee that due to exigency of duties, he was unable to appear before the Committee to brief it on the Universities Regulations, 2023. Further, he attached a matrix addressing issues that had been raised under minute no MIN.DA&OSC/CDL/246/2023 as follows;

- i. On the definition of terms, the Ministry clarified that the definitions were provided for in the Universities Act and the Regulations do not contravene the definitions.
- ii. The Regulations were seen to silent be on the fate of Universities, University compasses and University constituent Colleges that do not own the threshold of fifty acres of land. In their response, the Ministry indicated that Regulation 98 transits Universities, University compasses and University constituent Colleges that are already in existence.
- iii. The Ministry did not find a need to provide for a schedule of a Charter form since it was

provided for in the main Act. The Committee however deemed it fit that the schedule should be captured in the Regulations.

- iv. The Committee noted that the Ministry in their response failed to address the issue of penalties as provided for in Regulation 96. There was need to provide for clear Sanctions for offences under Regulations by cross-referencing with the Universities Act, 2012.
- v. It was also noted that Regulation 95 was delegating to the Commissioner of University Education the determination of Chargeable fees for services rendered contrary to Article 95(5) of the Constitution and Section 70 of the Universities Act, 2012.

Further, Mr. Dima Dima, Principal Legal Counsel I, briefed the Committee on issues that were noted in the University Regulations, 2023 which were as follows;

- i. **Inappropriate delegation of Legislative Powers:** Contrary to section 13(m) of the Statutory Instruments Act, 2013 and section 70 of the Universities Act, (No. 42 of 2012), the Regulations in Regulation 100 in appropriately delegated legislative powers to the Commission to make guidelines and to formulate standards on a raft of nineteen issues which were very pertinent such as, promotion of staff/ lecturers which ought to be a preserve of labour laws and not to be dealt with under further sub delegated powers or legislation.
- ii. **Non-conformity to the Parent Act:** While the Universities Act requires the Cabinet Secretary to make Regulations on the procedures for approval of academic programmes by the Commission; procedure for recognizing and equating degrees, diplomas and certificates conferred by foreign universities and criteria for evaluating internal tools developed by universities for the purpose of assessing quality assurance, a detailed analysis of the Regulations does not outline any such procedures hence contravening both sections 13(a) of the Statutory Instruments Act, 2013 which requires that Regulations to conform to the Act under which it is made and section 70 of the Universities Act, (No. 42 of 2012),.
- iii. **Insufficient public participation:** There was a mere mention and an attachment of a list of participants attending a stakeholder's forum in relation to the Regulations such as Universities and student Recruitment Agencies. However, there was no demonstration in the Explanatory memorandum, or at all, of public participation having been carried out. The Regulations touched on or were ancillary to matters relating to staff /employees of the various public and private universities, the students, locations, size and procedures of operations in the institutions and ought to have been made only as envisaged with proper public participation in the manner required under Article 10 and 118 of the Constitution and sections 5,5A and the Schedule to the Statutory Instruments Act (No. 23 of 2013).

- iv. **Failure to conduct Regulatory Impact Assessment:** Section 6 of the Statutory Instruments Act, 2013 requires that a Regulatory Impact Assessment be conducted where the proposed regulation are likely to impose significant costs on the community or part of the community. The very nature of the Universities Regulations involve matters relating to:
- a. establishment of public and private universities, technical universities, open universities, university campuses and university constituent colleges;
 - b. issuance, revocation and variation of University Charters;
 - c. implementation of differentiated unit costs, and discipline differentiated remuneration the academic year for the universities;
 - d. continuous accreditation and quality assurance, including programme accreditation;
 - e. procedure for the revoking a Letter of Interim Authority, varying or revoking a Charter and for winding up of universities; and
 - f. Registration of agents of foreign universities.
 - g. procedure for approval of academic programmes by the Commission;
 - h. procedure for recognizing and equation degrees, diplomas and certificates conferred by foreign universities.
 - i. criteria for evaluating internal tools developed by universities for the purpose of assessing quality assurance.
 - j. The above matters impose direct and significant costs on the general public, and which therefore, attracts the requirement of a Regulatory Impact assessment and a statement to that effect. This was neither conducted nor demonstrated to the Committee.
- v. Part 11 of the Regulations on the Recognition and Equation of Degrees, Diploma and Certificates conferred or awarded by Foreign Universities and Institutions contravenes the Kenyan Qualifications Framework Act 2014 by giving the Commission powers to evaluate foreign qualifications.
- vi. The Committee resolved that owing to various issues highlighted in the Universities Regulations, 2023, there was need to prepare a report proposing to the House to annul the said Regulations to give room for the issues identified to be addressed.

MIN. DAA&OSC/CDL/298/2023 ANY OTHER BUSINESS

There was no deliberation under this agenda item.

MIN. DAA&OSC/CDL/299/2023 ADJOURNMENT

There being no any other business, the meeting was adjourned at Fifteen Minutes past Eleven O'clock.

SIGNED:



THE HON. SAMUEL CHEPKONGA, CBS. M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

DATE:

10th August, 2023

MINUTES OF THE 37TH SITTING OF THE COMMITTEE ON DELEGATED LEGISLATION HELD ON THURSDAY, 29TH JUNE, 2023 AT THE SMALL DINING, NEW WING, MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

PRESENT

1. **The Hon Samuel Kiprono Chepkonga, CBS, M.P., Chairperson**
2. **The Hon. Robert Gichimu Githinji, M.P., Vice Chairperson**
3. The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP
4. The Hon. Nicholas S. Tindi Mwale, M.P.
5. The Hon. Maj. (Rtd). Abdullahi Bashir Sheikh, MP
6. The Hon. Gideon Kipkoech Kimaiyo, M.P.
7. The Hon. Ruku Geoffrey Kariuki Kiringa, M.P.
8. The Hon. Paul Chebor, M.P.
9. The Hon. Onchoke Charles Mamwacha. M.P
10. The Hon. Kibet Kirui Komingoi, M.P.
11. The Hon. Laura Amina Mnyazi, M.P.

APOLOGIES

1. The Hon. Robert Mbui, CBS, M.P
2. The Hon. Jared Okello Odoyo M.P.
3. The Hon. Linet Chepkorir M.P.
4. The Hon. Maj. (Rtd). Dekow Barrow Mohamed, M.P.
5. The Hon. Joseph Kamau Munyoro, M.P.
6. The Hon. Joyce Kamene, M.P
7. The Hon. Pauline Lenguris, M.P
8. The Hon. John Paul Mwirigi, M.P.
9. The Hon. Adow Kuno Yakub, M.P.
10. The Hon. Innocent Maino Mugabe, M.P.

SECRETARIAT

- | | | |
|--------------------------|---|---------------------------|
| 1. Ms. Esther Nginyo | - | Clerk Assistant I |
| 2. Mr. Wilson Dima Dima | - | Principal Legal Counsel I |
| 3. Mr. Brian Langwech | - | Clerk Assistant III |
| 4. Mr. Jacknorine Bulemi | - | Clerk Assistant III |
| 5. Ms. Winny Otieno | - | Clerk Assistant III |
| 6. Mr. Charles Ayari | - | Audio Officer |
| 7. Mr. Manuel Leparachao | - | Sergeant-at-Arms |

IN ATTENDANCE

MINISTRY OF EDUCATION

- | | | |
|-----------------------------|---|--------------------------|
| 1. Hon Ezekiel Machogu, CBS | - | Cabinet Secretary |
| 2. Prof. Mike Kuria | - | CEO, CUE |
| 3. Mr Isaac Gathirwa | - | Chief Legal Officer, CUE |
| 4. Mr. Joshua Wabwire | - | Legal Officer, MOE |

- | | | |
|---------------------------|---|---------------|
| 5. Dr. Alice Kande | - | Ag CEO, KNQFA |
| 6. Ms. Agnes Mercy Wahome | - | CEO, KUCCPS |
| 7. Mr. Joseph Musyoka | - | CISE |
| 8. Mr Geoffrey Monali | - | CEO, UFB |

AGENDA

1. Prayers
2. Preliminaries
3. Adoption of the Agenda
4. Confirmation of previous minutes
5. Matters Arising
6. **Briefing by the Cabinet Secretary Ministry of Education on the Universities Regulations, 2023. Legal Notice No. 56 of 2023 and the Draft Charter for Open University of Kenya**
7. Any Other Business; and
8. Adjournment.

MIN. DAA&OSC/CDL/242/2023 PRELIMINARIES

The Chairperson called the Meeting to order at 10.26 a.m. after which prayers were said by Hon. Onchoke Charles Mamwacha. M.P. The Chairperson then welcomed all present to the meeting with a round of introductions.

MIN. DAA&OSC/CDL/243/2023 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as was proposed by The Hon. Julius Lekakeny Ole Sunkuli, EGH, EBS, MP and seconded by Hon. Kibet Kirui Komingoi, M.P.

MIN. DAA&OSC/CDL/244/2023 CONFIRMATION OF MINUTES

Confirmation of the previous Minutes was deferred to the next meeting.

MIN.DAA&OSC/CDL/245/2023 MATTERS ARISING

No matter arose under this Agenda item.

MIN. DAA&OSC/CDL/246/2023 BRIEFING BY THE CABINET SECRETARY MINISTRY OF EDUCATION ON THE UNIVERSITIES REGULATIONS, 2023. LEGAL NOTICE NO. 56 OF 2023

Hon Ezekiel Machogu Cabinet Secretary, Ministry of Education briefed the Committee on the on the Universities Regulations, 2023.as follows; That

1. **Part I** of the Regulations provides for preliminary provisions which is the citation, interpretation of the various terminologies used in the text of the regulations and the scope to covered in the process of implementation of the regulations.

2. **Part II** of the Regulations provides for eligibility and application procedure of establishing a university, inspection of universities operating under letter of interim authority and revocation of the said letter, application for award of charter, accreditation process for award of charter, requirement for accreditation report, grant of charter , mergers and acquisition , change of sponsorship of a university, withdrawal of a sponsor of a university, accreditation of foreign universities , institutionalization of quality assurance , institutional quality audit, impromptu quality audit , inspection or investigation, promotion of quality teaching research , industry linkages , innovation and community, university data and information and university information system .
3. **Part III** of the Regulations provides for eligibility for establishment of a technical university and conditions for declaration, procedure for declaration and inspection of proposed technical universities. It further provides for consideration of technical inspection report, declaration quality audit and privileges of a technical university.
4. **Part IV** of the Regulations provides for establishment of specialized degree awarding institutions, criteria of establishing the same, accreditation process, consideration of the inspection report, audit and declaration of a specialized degree awarding or research institution.
5. **Part V** of the Regulations provides for establishment of a constituent college. It provides for application, consideration, operation, tenure and revocation of legal order establishing a constituent college.
6. **Part VI** of the Regulations provides for establishment of a university campus. It provides for the process of application, consideration for application, operation and tenure and further, the process for application to establish an open, distance and E-learning center.
7. **Part VII** of the Regulations provides for the process of accreditation or approval of academic programmes. It further provides for engagement of professional bodies in accreditation or approval of academic programmes, conditions for credit accumulation and requirement for universities to develop internal quality assurance for academic programmes.
8. **Part VIII** of the Regulations provides for the process of application for foreign university intending to collaborate with a local university or institution authorized to operate on Kenya. It further provides for obligations on both foreign and local universities entering into a collaboration agreement, process of approval of collaboration, maintenance of register of universities granted authority to collaborate and revocation of authority.
9. **Part IX** of the Regulations provides for the process of application for a local University intending to collaborate with a local university or institution authorized to operate in Kenya.

10. It further provides for a collaboration review committee, the power of the committee to grant authority to collaborate, publication of grant and revocation of the authority to collaborate.
11. **Part X** of the Regulations provides for application for license to operate student recruitment agencies and activities of foreign universities. The same provides for condition for operating a student recruitment agency and monitoring student recruitment agencies. It further provides for the effects of the license; obligation of an agency and maintenance of student recruitment agencies
12. **Part XI** of the Regulation provides for recognition and equation of degrees diploma and certificates conferred or awarded by a foreign university and institution. This further provides for principles of recognition and equation, evaluation of foreign qualification and criteria for recognition and equation of qualification.
13. **PART XII** of the Regulations provides for general provisions in terms of fees, penalties, review and appeals, transitional arrangements, continuation of time, preparation of standards and guidelines and declaration of standards and guidelines. Further the regulation provides for revocation of legal notice no. 76 of 2014.
14. **The First Schedule** of the Regulations provides for governance and management of a university.
15. Upon deliberations, the Committee observed that under Regulation 56(2), there would be streamlining of premises for hosting university campuses. There is however need to provide for a transition period for compliance purposes.
16. Regulations 95 was delegating to the Commissioner of University Education the determination of chargeable fees for services rendered contrary to Article 94(5) of the Constitution and Section 70 of the Universities Act, 2012.
17. There was no clarity on Regulation 96 on penalties. There was need to provide for clear sanctions for offences under the Regulations by cross-referencing with the Universities Act, 2012.
18. There was need to provide for a clear definition of the term 'private university' as the term defined in the Regulations was prohibiting use of public funds in the private universities.
19. Having considered and deliberated on the Universities Regulations, 2023, the Committee resolved that the Ministry of Education to review the Regulations considering the areas that needed clarification and resubmit them to Parliament in a week's time from the date of the meeting.

Hon Ezekiel Machogu Chris Cabinet Secretary, Ministry of Education briefed the Committee on the Draft Charter for Open University of Kenya as follows, That;

1. **Part I** provides for preliminary provisions.
2. **Part II** provides for the establishment and incorporation of the university, object and functions of the University, establishment of learner support centres; designation, conferment, granting, cancellation and withdrawal of Degree, Diplomas and other awards and award of scholarships
3. **Part III** provides for Membership and governance of the University, which includes;
 - a) Membership of the University
 - b) The Chancellor
 - c) The Council
 - d) The Vice-Chancellor
 - e) The Deputy Vice-Chancellor
 - f) The Senate
 - g) The University Management Board
 - h) The Convocation
 - i) The Alumni Association
 - j) The Students' Association
 - k) Performance of functions during incapacity of the Office holder.
4. **Part IV** is on financial provisions.
5. **Part V** is on miscellaneous provision which include; instruments of governance, instruments of authority, the statutes, protection of name and variation and revocation of the Charter.
6. The Committee upon deliberations observed that the establishment of the Open University of Kenya would bring major reforms in the education sector through embracing technology as medium of learning.
7. The Committee also observed that the Draft Charter on the establishment of the Open University of Kenya was compliant with the Universities Act, 2012, and the Universities Regulations, 2023.
8. The Committee consequently resolved to recommend to the House to approve the Draft Charter for the Establishment of the Open University of Kenya as was proposed by the Hon. Charles Onchoke Mamwacha, MP and seconded by the Hon. Robert Gichimu, MP.

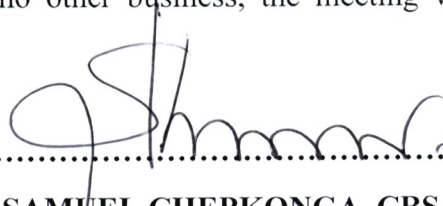
MIN. DAA&OSC/CDL/240/2023 ANY OTHER BUSINESS

There was no deliberations under this agenda

MIN. DAA&OSC/CDL/241/2023 ADJOURNMENT

There being no other business, the meeting was adjourned at Twenty Minutes past Twelve O'clock.

SIGNED:



4th July, 2023

THE HON. SAMUEL CHEPKONGA, CBS. M.P.

CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION
DATE:



REPUBLIC OF KENYA
MINISTRY OF EDUCATION
Office of the Cabinet Secretary

Telephone: Nairobi (020) 318581
Email: cabinetsecretarymoe@gmail.com
Website: www.education.go.ke

Ref: MOE./SDHER/CON/2/3

Mr. Samuel Njoroge
Clerk
National Assembly
Parliament Buildings
NAIROBI

Dear Sir,

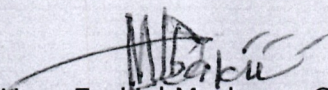
RE: UNIVERSITIES REGULATIONS, 2023

Reference is made to the captioned subject matter.

In line with Section 5A as read with Section 11(1) of the Statutory Instruments Act, 2013, please find enclosed herewith the above-captioned Regulations, together with the Explanatory Memorandum for tabling before the House.


I remain grateful for your continued support.

Yours sincerely,

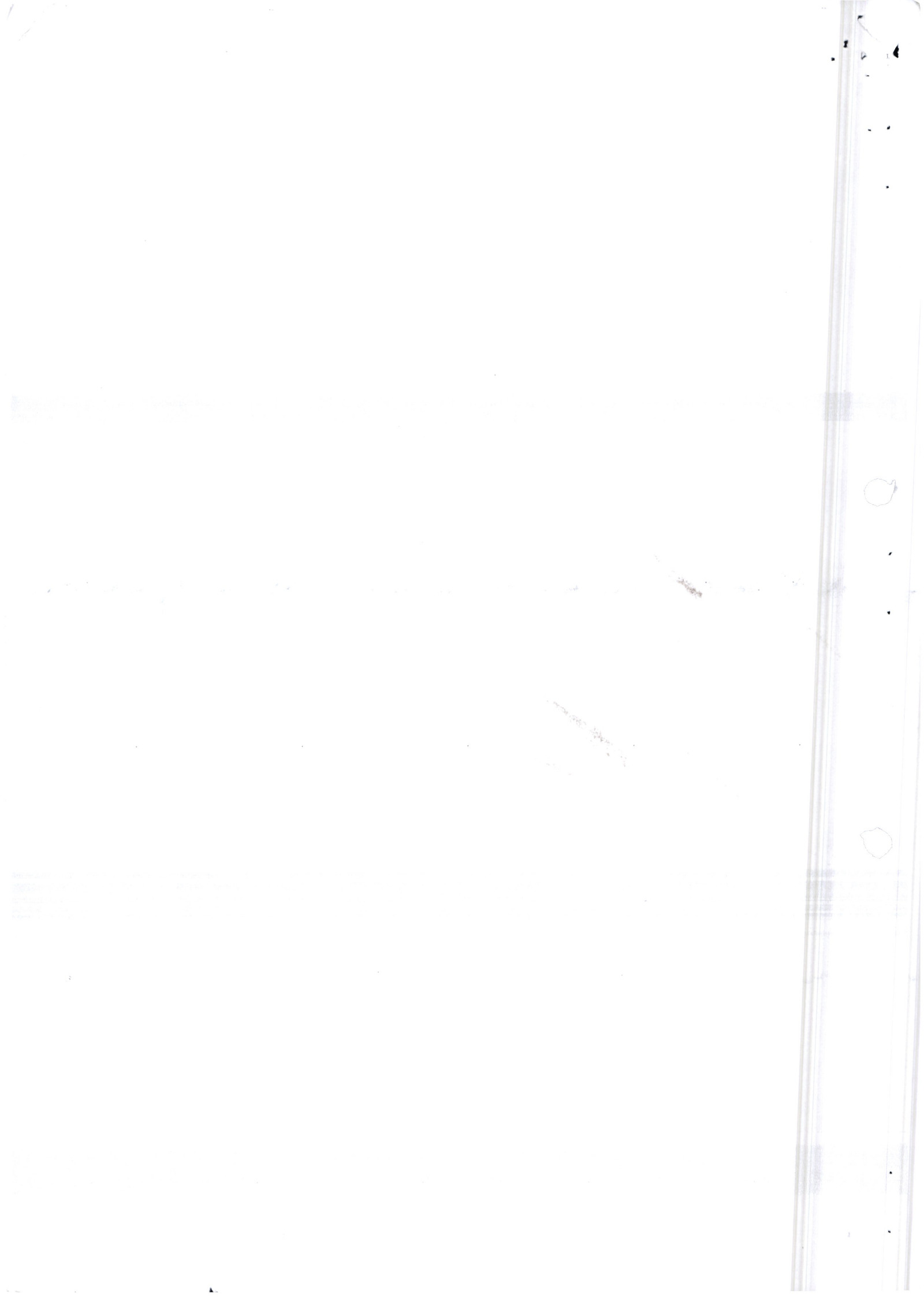

Hon. Ezekiel Machogu, CBS
CABINET SECRETARY

Copy to: **Dr. Beatrice Inyangala, PhD**
Principal Secretary
State Department for Higher Education and Research
Ministry of Education
NAIROBI

Delegated
DLSP
8/15/23
⑦ H/O
please acknowledge, register
and ensure tabling
House
Jogoo House "B"
Harambee Avenue
P.O. BOX 30040 - 00100
NAIROBI - Kenya
5th May, 2023
18/5/23

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 JUN 2023	
TABLED BY:	
CLERK-AT-TABLE:	

NATIONAL ASSEMBLY RECEIVED 08 MAY 2023 DEPUTY CLERK J.W.N P. O. Box 41842 - 00100, NAIROBI
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(Legislative Supplement No. 24)

LEGAL NOTICE NO. 56

THE UNIVERSITIES ACT

(No. 42 of 2012)

THE UNIVERSITIES REGULATIONS, 2023

Arrangement of Regulations

PART I — PRELIMINARY

1. Citation
2. Interpretation
3. Scope

PART II — ESTABLISHMENT OF A UNIVERSITY

4. Eligibility and application procedure
5. Proposal particulars and resources
6. Issuance of Letter of Interim Authority
7. Inspection of Universities operating under Letter of Interim Authority
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FIRST SCHEDULE—GOVERNANCE AND
MANAGEMENT OF A UNIVERSITY

THE UNIVERSITIES ACT, 2012

(No. 42 of 2012)

IN EXERCISE of the powers conferred by section 70 of the Universities Act, 2012, the Cabinet Secretary, Ministry of Education, makes the following Regulations—

THE UNIVERSITIES REGULATIONS, 2023

PART I — PRELIMINARY

1. These Regulations may be cited as the Universities Regulations, 2023. Citation.

2. In these Regulations, unless the context otherwise requires— Interpretation.

“academic character” means the aggregate of distinctive features of a university as demonstrated by its academic activities including the disciplines covered by majority of its academic programmes, consistent with the philosophy of the university;

“academic programme” means the design of learning content, which is multi-dimensional and includes intentions, structure of content, delivery modes, academic resources and assessment modes;

“academic resources” means resources including, infrastructure, human and information resources to support academic programmes;

“academic staff” means a person who has been appointed to teach, train or to do research in a University and any other employee designated as such by the University council;

“academic year” means a period of teaching and examination organized in a full year in either two, three or four segments;

“access” means the opportunity availed for one to enter education and training;

“accreditation” means the procedure by which the Commission formally recognizes an institution as a University, and having fulfilled the prescribed criteria for mounting its academic programmes;

No. 42 of 2012.

“Act” means the Universities Act, 2012;

“acquisition” means takeover or purchase of one university or institution by another;

“admission” means the act of, or system for, allowing qualified applicants to pursue studies in University education at a given institution or in a given qualification;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for University Education;

“certificate” means the level of qualification below Diploma;

“Charter” means the Charter granted to a University under sections 19, 24 or 25;

“collaboration” means an arrangement between a foreign university and a local university or institution, and between a local

university and local university or institution for purposes of offering academic programmes;

“Commission” means the Commission for University Education established under section 4 of the Act;

“course” means a single unit in a programme of study;

“curriculum” means a documented programme of study;

“constituent college” means a constituent college of a University established under the Act;

“Council” means a body established under section 35(1) (a) of the Act;

“degree” means an award, above the level of a diploma, conferred by a university or institution upon the decision of the Senate, signifying that the recipient has satisfactorily completed a course of study at the specified level;

“department” means an academic division in a faculty or school defined for purposes of teaching, examinations and administration;

“diploma” means the level of qualification below a degree and above a certificate;

“diversity statement” means a commitment statement of a University or institution with respect to students and staff and to the University community, particularly those who have been traditionally marginalised or risk marginalization;

“distance learning” means the mode of delivering education remotely through use of print, audio-visual, electronic or other technical media;

“dual degree” means an arrangement under which a university collaborates with another university where students undertake studies in two different fields in order to earn two separate degrees, one from each collaborating institution;

“double or multiple degrees” means an arrangement where two or more awarding universities or institutions collectively offer a jointly delivered programme leading to separate degree awards and separate certification being awarded by each partner university or institution;

“faculty or school” means an academic division so designated or established under the instruments constituting a University;

“foreign university” means a University established outside Kenya;

“Funding Board” means the Universities Funding Board established under section 53 of the Act;

“institution” means a public or private institution or facility used or to be used wholly or partly, for the conduct of university education and research;

“joint degree” means an arrangement where a university works in collaboration with one or more partner universities to jointly develop

and deliver an academic programme leading to a single degree award from all participating institutions;

“learning environment” means the physical and virtual space, social and cultural context within which university education is offered;

“Letter of Interim Authority” means a form of accreditation status granted to a University in accordance with the Act;

“library facility” means a purpose-built functional library;

“merger” means an amalgamation of two or more universities or institutions to form a single entity;

“Open University” means the Open University established under the Act;

“openness” means access to university education without barriers;

“private University” means a University which is not established or maintained out of public funds;

“professional programme” means an academic programme that leads to an occupation governed by a statutory regulatory body;

“programme accreditation” means the process by which the Commission formally recognizes an academic programme of a University including foreign University;

“programme of study” means the prescribed syllabus that students must be taught at each level of study;

“public University” means a University established and maintained out of public funds;

“qualification” means any degree, diploma or certificate issued as evidence of successful completion of a university education programme;

“quality audit” means the process of quality assessment by which the Commission ensures that the institutional and programme quality assurance procedures of the university/institution are adequate and are actually being carried out;

“quality assurance” means the employment by a university of various measures and mechanisms developed by the Commission to assess, maintain and enhance standards of programmes offered by a university;

“recognition” means the formal acknowledgement by the Commission of the appropriateness of a foreign qualification;

“Senate” means the Senate of a University established under the Act;

“sponsor” means any person including the government proposing the establishment of a university and committed to its development, implementation, construction, maintenance, management and financing;

“Specialized Degree Awarding Institution” means an institution established under section 24 of the Act which includes specialized degree awarding or research institutions and open university;

“stakeholder” means a person, group of persons involved in an education, training and research institution and with vested interests for the benefit of such an institution;

“standard” means a level of attainment against which different aspects of an institution and academic programme are compared or evaluated for quality by the Commission;

“standards and guidelines” means the Universities standards and guidelines established under regulation 100;

“Statutes” means the statutes of a university made by a University Council;

“student” means a person registered in a University or an institution offering University education;

“Technical University” means a University, established in accordance with section 25 of the Act;

“technical inspection” means the inspection undertaken as a process for accreditation;

“twinning programme” means an arrangement where two awarding universities or institutions allow students to complete a portion of their course in their home university or institution, and then transfer to the partner university or institution in another country to complete their studies;

“University” means a University established under the Act; and

“University campus” means the smallest unit set up by a University pursuant to its Statutes and established in accordance with section 20 of the Act, and mirrors the main University.

3. (1) These Regulations shall apply to—

Scope.

(a) all universities in Kenya, including—

- (i) private universities;
- (ii) public universities;
- (iii) technical universities;
- (iv) constituent colleges;
- (v) the Open University; or
- (vi) any foreign university intending to offer university education in Kenya;

(b) specialized degree awarding or research institutions established under the Act, with necessary modifications as shall be provided in the instruments establishing or declaring the institutions;

- (c) student recruitment agencies operating in Kenya;
- (d) an agent or agency, university or institution specified in paragraph (1) (a), (b) and (c) operating or intending to operate as, or on behalf of, a university within Kenya;
- (e) a holder of a degree, diploma and certificate conferred or awarded by a foreign university or institution seeking recognition or equation of a qualification from the Commission; and
- (f) an organization or entity seeking recognition and equation of a degree, diploma and certificate conferred or awarded by a foreign university or institution.

(2) Notwithstanding the above provisions, the Commission and the Cabinet Secretary shall provide guidance and directions on all other matters pertaining to University education.

PART II-ESTABLISHMENT OF A UNIVERSITY

4. (1) A person or entity seeking to establish a University shall apply to the Commission in accordance with these Regulations.

Eligibility and application procedure.

(2) The following shall be eligible to apply to the Commission for authority to establish a university or, as the case may be, to constitute itself into a university—

- (a) a person or entity who intends to be or is a sponsor of a university; or
- (b) a body corporate or institution having as one of its objects the provision of university education.

(3) A person or institution eligible to apply for authority to establish or constitute itself into a university under this regulation shall submit an application in a format prescribed by the Commission, duly completed and certified by the applicant, or on the applicant's behalf by a person competent to do so.

(4) Where an application remains pending for a period of one year, due to failure by the applicant to adhere to the recommendations by the Commission, the application shall lapse.

(5) Any person or institution eligible to apply to the Commission to establish or constitute itself into a university under these Regulations shall pay the prescribed fees.

5. (1) An application under regulation 4(3) shall be accompanied by a proposal setting out—

Proposal particulars and resources.

- (a) the vision, mission, diversity statement, philosophy and justification of the university;
- (b) the institutional ability and expertise of the sponsor for offering higher education;
- (c) the resources, including land, physical facilities, finances, staff, library services, teaching and research infrastructure, plant and equipment;

- (d) an evaluation of the appropriateness and adequacy of the resources in paragraph (1)(c) to support the proposed academic programmes to be conducted at the University, which have been or can be procured, and the manner in which these resources shall be maintained on a long-term basis;
- (e) the proposed name, location and academic character of the university;
- (f) functions, aims, objectives, strategies and domain of the university, which should be consistent with the needs of university education in Kenya for which the university is to be established;
- (g) the form of governance through which the academic and administrative affairs of the university are to be conducted;
- (h) an outline of the academic programmes intended to be offered at the university;
- (i) a timetable indicating the steps to be taken in the next four years towards the realization of the aims and objects for which the university is to be established;
- (j) proof of land ownership on which the university shall be located, and evidence that the subject land is not less than fifty acres to cater for the seat of the university, academic programmes, co-curricular activities, facilities for staff and student welfare;
- (k) academic resources for each academic programme;
 - (l) a financial management strategy and policy; / Adequacy
- (m) a student management system;
- (n) a safety and security system; and
- (o) any further information as may be required by the Commission. Relevance
- (2) The proposal shall have the following appendices—
 - (a) a draft Charter in the prescribed format and in the manner specified in section 13(3) of the Act;
 - (b) curricula for the proposed academic programmes designed in accordance with the prescribed standards and guidelines;
 - (c) a registered Trust Deed or any constitutive document for the university in case of a private university;
 - (d) a description of the university library; — description
 - (e) evidence of physical resources which includes, copies of title deeds, certificate of change of user, completion certificates, borehole log, tests of water and architectural drawings;

- (f) a master plan, business continuity plan, strategic plan and a five-year financial plan which shall include a statement of availability and sources of funding;
- (g) the regulations governing student conduct;
- (h) the student handbook;
- (i) the certificates by statutory or relevant certification bodies;
- (j) a synopsis of the applicant's academic resources in place;
- (k) a computation of financial viability and ratios;
- (l) regulations governing the terms and conditions of service for staff; and
- (m) any other document that may be required by the Commission.

(3) Notwithstanding the provisions of paragraph (2) and where applicable, an application for establishment of a university offering programmes through Open, Distance and Electronic Learning, the proposal shall provide evidence of dedicated academic resources and institutional framework for Open, Distance and Electronic Learning as specified in the prescribed standards and guidelines;

(4) All correspondence, communication, transactions and engagements under this regulation shall clearly indicate the word "Proposed" before the name of the university.

(5) The Commission shall not process any application unless all the requirements under paragraphs (1), (2) and (3) where applicable are complied with.

6. (1) Upon review of an application, the Commission shall schedule a meeting with the applicant to review the submitted documentation and evidence in respect of the resources indicated.

Issuance of Letter
of Interim
Authority.

(2) The Commission shall then conduct an inspection to evaluate the available resources.

(3) For purposes of paragraph (2), the Commission shall set up an inspection committee that shall consist of—

- (a) at least one academician of senior lecturer grade and above, who must be conversant with University management;
- (b) a university librarian;
- (c) a registered architect;
- (d) the relevant officers of the Commission; and
- (e) any other expert or a professional that the Commission may determine to be necessary.

(4) The inspection committee shall prepare a report and submit it to the Commission.

(5) Where after deliberation on the merits of each application the Commission is satisfied that—

- (a) the particulars given under regulation 5 do not in any way reproduce or otherwise duplicate those of an existing or prospective University;
- (b) the resources declared under regulation 5 are available, adequate and appropriate to support the proposed programmes and student enrolment;
- (c) the applicant is following realistic plans to achieve the aims and objects for which the University is to be established;
- (d) the University, when established, will attain and maintain on a long-term basis standards prescribed by the Commission;
- (e) the proposed university has established governance organs in accordance with the Act; and
- (f) the establishment of the University is in the interest of university education in Kenya,

the Commission shall recommend to the Cabinet Secretary the grant of a Letter of Interim Authority to operate in the manner specified in the Act.

(6) The Letter of Interim Authority shall confer the powers, rights and privileges as set out in section 15 of the Act.

(7) All costs under this regulation shall be borne by the applicant.

7. (1) The Commission shall with or without notice once every year inspect all Universities holding a Letter of Interim Authority to—

- (a) confirm the extent to which the University is complying with the legal provisions and adhering to the prescribed guidelines;
- (b) assess the extent to which the University can continue admitting students; and
- (c) confirm the extent to which the University is making progress towards the award of the Charter.

(2) The inspection referred to in paragraph (1) shall be conducted by an inspection committee constituted in accordance with regulation 6 (3).

(3) The inspection committee shall compile an inspection report and submit it to the Commission.

(4) Where the Commission arrives at a decision that a university has not complied with or conformed to the relevant legal provisions, the Commission shall issue a notice to the University in accordance with section 69A of the Act.

(5) Where the University fails to comply within the notice period under paragraph (4), the procedure for revocation of the Charter and winding up of a University under the Act and these Regulations shall apply.

Inspection of
universities
operating under
Letter of Interim
Authority.

- (6) For purposes of paragraph (5), the issues shall include—
- (a) establishing unauthorized campuses, colleges or Open and Distance Electronic Learning Centres;
 - (b) inadequate academic resources to support academic programmes on offer and student enrolment;
 - (c) violation of the governance provisions set out in the Act and these Regulations;
 - (d) mounting of academic programmes without prior approval of the Commission;
 - (e) exceeding authorized enrolment capacity per programme;
 - (f) financial instability for three consecutive years;
 - (g) refusal to abide by the directions of the Commission; and
 - (h) any other violation determined by the Commission to be grave and which has been communicated to the University in writing.

8. (1) The Cabinet Secretary may, on recommendation of the Commission following a technical inspection and by notice published in the *Gazette*, revoke a Letter of Interim Authority, if—

Revocation of a Letter of Interim Authority.

- (a) the University has not within four years of issuance or extension of the Letter of Interim Authority, made substantial progress in respect of the matters set out in these Regulations;
- (b) the University notifies the Commission of its intention not to proceed towards award of Charter;
- (c) the University is incapable of complying with the prescribed standards;
- (d) in the opinion of the Commission, fundamental changes have occurred since the issuance of the Letter of Interim Authority that had such changes been in existence at the time of its deliberations under paragraph (5), the Letter of Interim Authority would not have been issued;
- (e) at any time before the lapse of four years it becomes apparent that the University is not making any progress or is not likely to make any progress towards award of Charter; or
- (f) its continued existence does not promote the objectives of university education.

(2) Without prejudice to the foregoing, the Commission shall accord the University fair administrative action.

(3) Prior to recommending revocation of a Letter of Interim Authority, the Commission shall conduct an inspection, during which it will take inventory in the prescribed format which shall include—

- (a) the enrolment and student data;

- (b) the data on graduates;
- (c) the data on staff;
- (d) the terms and conditions for staff;
- (e) the University's assets and liabilities; and
- (f) any other information deemed necessary by the Commission.

(4) Upon revocation of a Letter of Interim Authority, the Cabinet Secretary may, in consultation with the Commission and the Sponsor, appoint such person or persons as the Cabinet Secretary may deem appropriate to administer and manage the institution for the better protection of the interests of the students and staff of the University.

(5) The persons appointed under paragraph (4) shall submit to the Commission a status report which shall include—

- (a) an inventory of the University's assets being handed over to the person or persons appointed under paragraph (4);
- (b) the enrolment and student records and data;
- (c) inventory of the graduates;
- (d) commitment on fulfillment of obligations relating to staff contracts; and
- (e) any other information deemed to be necessary by the Commission.

(6) Notwithstanding the provisions of paragraph (1), the revocation of a Letter of Interim Authority shall not affect the validity of any academic award made by the University before the revocation.

(7) Upon revocation of the Letter of Interim Authority, the provisions of regulation 16 on winding up shall apply.

(8) Without prejudice to the foregoing, if a fresh application is made by the applicant after revocation of a Letter of Interim Authority, such an application shall be processed as a new application as provided for in regulation 5.

9. (1) A University operating under a Letter of Interim Authority shall make an application for award of Charter at least eight months before the expiry of the Letter of Interim Authority.

Application for
award of Charter.

(2) A Constituent College established under a Legal Order shall make a formal application for award of Charter at least eight months before the end of four years of its existence.

(3) Upon receipt of the application for award of Charter, the Commission shall constitute an Inspection Committee as specified in regulation 6(3) which shall carry out a final inspection of the University.

(4) The Inspection Committee shall prepare and compile an inspection report and submit to the Commission.

10. (1) The Commission shall recommend to the Cabinet Secretary that the University be awarded a Charter where satisfied that—

Accreditation process for award of Charter.

- (a) the draft Charter as submitted or as amended where necessary forms a sound basis for the academic and administrative organization of the University; and
- (b) the University has effectively organized adequate library facility and information services, human, physical, financial and other resources in accordance with the prescribed guidelines,

(2) Where the Commission is not satisfied in the manner indicated in paragraph (1), it shall recommend to the Cabinet Secretary an extension or revocation of the Letter of Interim Authority as provided for in the Act.

(3) Where the Commission is not satisfied in the manner indicated in paragraph (1), in the case of a Constituent College, it shall recommend to the Cabinet Secretary an extension for a final period of four years or revocation of the Legal Order and conversion to a campus, college or institute of the mentoring university.

11. (1) Where the Commission has made a recommendation for award of Charter with respect to an institution, the Commission shall compile an accreditation report detailing the following—

Accreditation report.

- (a) the historical background, vision, mission, core values, diversity statement, and philosophy of the University;
- (b) the accreditation process, including the various inspections and the findings of the Commission;
- (c) the implementation of the Master Plan and the Strategic Plan for continued growth of the institution;
- (d) the academic resources available for the support of academic programmes at the time of the final inspection;
- (e) the academic programmes which the University had been allowed by the Commission to mount and have registered ongoing students by the time of the final inspection;
- (f) the financial resources available at the institution including financial plans and projections;
- (g) the library facility and information services;
- (h) the research and innovation output;
- (i) a summary of recommendations to the institution; and
- (j) the final recommendation to the Cabinet Secretary.

12. (1) The Commission shall, where satisfied, submit the draft Charter and the accreditation report to the Cabinet Secretary, together with its written recommendation, for consideration for the award of Charter.

Grant of Charter.

(2) The Cabinet Secretary shall, where satisfied, recommend to the President the award of Charter in accordance with the Act.

13. A University authorized to operate in Kenya, shall—

Governance and management of a University.

- (a) establish its organs of governance and management as prescribed in the Act and these Regulations;
- (b) articulate the roles of the various organs and their inter-relationships as set out in the First Schedule;
- (c) take into account the national values and principles of governance set out under Article 10 of the Constitution in constituting the governance organs;
- (d) ensure that there is clear separation of powers between the organs, and in particular no one person shall head two organs whose relationship is oversight in nature;
- (e) ensure the membership of the sponsor does not constitute more than a third of the Board of Trustees; and
- (f) put in place mechanisms to ensure that the capacity of the members of each governing organ is enhanced, through relevant training, including aspects of governance.

14. (1) A University shall develop a financial policy and procedure in line with the vision, mission and strategic objectives to provide a framework within which the financial affairs of the University shall be managed.

Financial provisions for Universities.

(2) A University shall utilize its funds in line with the objectives of university education.

(3) A University shall comply with all statutory provisions.

(4) A University shall submit to the Commission a copy of its audited accounts reports annually.

15. (1) A Charter granted as evidence of accreditation to any University may be varied or revoked in the manner specified in accordance with the Act.

Variation or revocation of Charter.

(2) The Cabinet Secretary may, on recommendation of the Commission following a technical inspection and by notice published in the *Gazette*, revoke the Charter.

(3) Upon revocation of Charter, the provisions of winding up as provided under regulation 16 shall apply.

16. (1) A University, institution or constituent college shall be wound up upon revocation of the Charter, the Letter of Interim Authority, or Legal Notice as applicable.

Winding up of a University, institution or constituent college.

(2) Upon revocation of Charter, Letter of Interim Authority, or Legal Notice, the Cabinet Secretary shall—

- (a) convene a meeting of the Commission and the Sponsor for a private University or institution or with the Commission for public University within three days which shall—
 - (i) consider the inspection report under regulation 8; and

- (ii) consider the status report submitted by the University under regulation 8(5);
- (b) take custody of the instruments of authority and accreditation;
- (c) put in place security measures to preserve the assets of the University;
- (d) appoint appropriate persons to administer and manage the winding up process, who shall—
 - (i) in accordance with the prescribed standards and guidelines and relevant laws, commence the winding up process;
 - (ii) for the better protection of the interests of the students of the University, within one year, develop and facilitate the transfer plan for continuing students in accordance with the provisions of the Act;
 - (iii) cause to be published in at least two newspapers of national circulation and the University's website a notice requiring students, graduates, and staff who may have any claim, interest, entitlement, on the wound-up University to raise them within one year; and
 - (iv) upon the expiry of one year, submit a final report to the Commission highlighting the issues contemplated in regulation 8(6); and
- (e) require the agency responsible for student placement to transfer students to other universities offering the programmes for which the students were admitted with the available Credit Accumulation Transfer Systems.

(3) Where a University has been wound up, the Commission shall keep the records and information of the University submitted to it at the point of winding up.

17. (1) A University which intends to change its name may submit a proposal to the Commission for consideration and approval in accordance with the Act, these Regulations and the prescribed standards and guidelines.

Change of name
of a University.

(2) In considering the application under paragraph (1), the Commission shall ensure that the proposed change—

- (a) safeguards the objects and purpose of the University;
- (b) protects the interest of the students and staff;
- (c) provides for the transition of obligations, rights and privileges;
- (d) does not adversely affect the governance of the university;
- (e) is accompanied by a statement of the consultations undertaken with stakeholders including students before the proposed change of name was made; and

(f) complies with the Constitution, the Act, other relevant laws and other statutory requirements.

(3) Where the Commission approves the proposed change it shall, forward the recommendation to the Cabinet Secretary for *Gazettement*.

(4) Where the Commission rejects the proposed change of name, it shall communicate its decision and the reasons thereof.

18. (1) A Sponsor of a University who intends to have the University enter into a merger or an acquisition shall submit a formal application in the prescribed format to the Commission.

Mergers and acquisitions.

(2) An application under paragraph (1) shall be accompanied by—

- (a) a status report in a prescribed format of the institutions involved; and
- (b) the merger or acquisition proposal.

(3) In considering the application under paragraph (1), the Commission shall have regard to—

- (a) the students' welfare;
- (b) the staff welfare;
- (c) the assets and liabilities of the institutions; and
- (d) any other information the Commission may deem necessary.

(4) Upon receipt of the application under paragraph (1) from the Sponsor, the Commission shall constitute an inspection committee as specified in regulation 6(3) which shall carry out an inspection of the institutions.

(5) The inspection committee shall prepare and compile an inspection report and submit to the Commission.

(6) The Commission shall consider the inspection report and where satisfied, recommend to the Cabinet Secretary who shall upon being satisfied recommend to the President for approval of the merger or acquisition.

(7) If not satisfied, the Commission shall reject the proposal and communicate its decision and the reasons thereof.

(8) Where the President approves the proposed merger or acquisition the same shall be published by notice in the *Gazette* by the Cabinet Secretary.

(9) The merger or acquisition shall conform to the Constitution, the Act, other relevant laws and other statutory requirements.

(10) An application for a merger or acquisition shall be accompanied by the prescribed fees.

(11) In the case of a merger, the accreditation instrument of the institutions involved, shall be revoked and recalled by the Commission and a new instrument shall be granted.

(12) In the case of an acquisition the accreditation instrument of the institutions may be varied.

19. (1) A Sponsor of a University who intends to change the sponsorship of the University shall apply to the Commission.

Change of
sponsorship of a
University.

(2) The Sponsor shall ensure that the change referred to in paragraph (1)—

- (a) safeguards the objects and purpose of the University as established under regulation 5;
- (b) protects the welfare of the students;
- (c) protects the interests of the members of staff;
- (d) ensures separation of powers of the various organs of the University;
- (e) does not adversely affect the objectives of university education as provided for in the Act; and
- (f) complies with the Constitution, the Act, other relevant laws and other statutory requirements.

(3) An application under paragraph (1) shall be accompanied by—

- (a) the status report of the institution summarizing the various facets of University including student enrolment, staffing, academic programmes, facilities and finances;
- (b) the profile of the new sponsor, highlighting the background, proven relevant experience in provision of higher education and any other institutions or businesses associated with the sponsor;
- (c) the measures to be put in place to ensure the welfare of students and staff of the University;
- (d) any anticipated changes in governance and management of the university;
- (e) the assets and liabilities of the University; and
- (f) a draft Trust Deed amended as contemplated with the change of sponsor;

(4) The Commission shall consider the application and where satisfied that the new sponsor complies with the prescribed provisions on—

- (a) promoting the objectives of university education in Kenya;
- (b) promoting the objects and purpose for which the university was established;
- (c) the welfare of students;
- (d) the interest of staff;

- (e) governance and management of the University; and
- (f) management of assets and liabilities of the University;—the Commission may approve the change of sponsor.

(5) The change of sponsor shall be communicated to the Cabinet Secretary, who shall cause a notice of variation of the Charter and publish in the Gazette, and the variation shall come into effect on such date as may be specified in the notice

(6) Where the proposed sponsor has not met the requirements under paragraph (4), the Commission shall decline the application for change of sponsor.

(7) A sponsor may re-submit a request for change of sponsor for consideration after addressing any issues raised by the Commission.

20. (1) A sponsor of a private University intending to withdraw sponsorship shall apply to the Commission.

Withdrawal of a sponsor of a private University.

(2) An application under paragraph (1), shall be accompanied by—

- (a) the status report of the University, detailing the various facets of the University including students' enrolment and data, staffing, academic programmes, facilities and finances;
- (b) the measures put in place to ensure the welfare of students and staff of the University during the teach out period; and
- (c) the assets and liabilities of the University.

(3) Upon receipt of the application under paragraph (1), the Commission shall convene a meeting or a series of meetings with the Sponsor with a view of authenticating the request for withdrawal of the sponsorship.

(4) Prior to making a decision on the intention to withdraw sponsorship, the Commission shall conduct an inspection and document an inventory of—

- (a) the enrolment and student data;
- (b) the data on graduates;
- (c) the data on staff;
- (d) the terms and conditions of staff;
- (e) the University's assets and liabilities; and
- (f) any other information deemed necessary by the Commission.

(5) The Commission shall consider the inspection report and recommend to the Cabinet Secretary the appointment of the appropriate persons to administer and manage the winding up process of the University and who shall—

- (a) apply the prescribed standards and guidelines on winding up;
- (b) for the better protection of the interests of the students of the University, in collaboration with the agency responsible for placement of students in universities and relevant academic organs of universities, facilitate the transfer of students;
- (c) cause to be published in at least two newspapers of national circulation, the University's website, Commission's website and the website of the Ministry responsible for university education, a notice requiring any person who may have any claim, interest, entitlement, on the University that is being wound up, to raise them within one year from a date to be specified in the notice; and
- (d) submit a status report to the Cabinet Secretary and the Commission,

for revocation of Charter or Letter of Interim Authority as provided under regulations 8, 15 and 16;

(6) Where a University has been wound up, the Commission shall keep in safe custody the records and information about the University submitted to it at the point of winding up.

21. (1) A foreign University which intends to operate in Kenya shall apply for accreditation, in the manner specified in Part III of the Act and Part II of these Regulations.

Accreditation of foreign universities.

(2) In addition to meeting the criteria set out in paragraph (1), a foreign University operating in Kenya shall ensure that not less than one-third of the representation in the Board of Trustees are Kenyan citizens, residing in Kenya.

22. (1) Every University accredited to operate in Kenya shall establish quality assurance policy, systems and mechanisms.

Institutionalization of quality assurance.

(2) For purposes of paragraph (1), each University shall—

- (a) develop and implement an internal quality assurance policy;
- (b) establish a functional internal quality assurance structure in all its campuses and colleges;
- (c) provide adequate physical and financial resources;
- (d) appoint qualified and adequate staff in the quality assurance unit; and
- (e) develop tools for internal quality assurance.

(3) Every University shall submit to the Commission detailed annual progress report, in a prescribed format, on activities undertaken to maintain and enhance quality in teaching, research, industry linkage, innovation and community outreach.

23. (1) Every University shall prepare a detailed self-assessment report and submit to the Commission, in a prescribed format, every five years on the steps it has taken towards the achievement of the aims and objectives for which it was established. Institutional quality audit.

(2) The Commission shall consider the report submitted pursuant to paragraph (1) and make such recommendation or give such other instructions for action by the University.

(3) The Commission shall undertake a regular institutional quality audit of the University on—

- (a) the steps it has undertaken towards the achievement of the aims and objectives for which it was established; and
- (b) compliance with and conformity to the relevant legal provisions.

(4) The quality audit under paragraph (3) shall be undertaken by an institutional quality audit panel which shall consist of—

- (a) at least two academicians of senior lecturer grade and above;
- (b) one person who has experience in University management;
- (c) a University librarian;
- (d) a registered architect;
- (e) the relevant officers of the Commission; and
- (f) any other expert or professional that the Commission may determine to be necessary.

(5) Pursuant to paragraphs (3) and (4), and if satisfied that the University has continued to maintain standards, the Commission shall issue a certificate of audit that shall serve as a seal of quality maintenance and enhancement.

(6) Where the Commission arrives at a decision that a university has not complied with or conformed to the relevant legal provisions, the Commission shall issue a notice to the University in accordance with section 69A of the Act.

(7) The notice issued under paragraph (6) shall specify the violations to be complied with not later than six months from the date of issue of the notice.

(8) The University shall submit to the Commission the steps to be taken under paragraph (6) within prescribed timelines.

(9) For purposes of paragraph (8), violations shall include—

- (a) establishing unauthorized campuses, colleges or Open, Distance and E-Learning Centres;
- (b) inadequate academic staff or other academic resources for the support of academic programmes on offer and student enrollment;

- (c) offering an academic programme in an unaccredited site;
- (d) varying the title of an approved academic programme;
- (e) offering a programme in unaccredited mode of delivery;
- (f) exceeding the approved enrollment capacity per programme;
- (g) violation of the governance provisions set out in the Act;
- (h) mounting of academic programmes without the approval of the Commission;
- (i) financial instability for three consecutive years;
- (j) refusal to abide by the directions of the Commission; and
- (k) any other violation determined by the Commission to be grave and communicated in writing to the institution.

(10) During the pendency of the notice, the university shall not admit students in any of its programmes.

(11) Where the University fails to comply within the notice period under paragraph (6), the procedure for revocation of the Charter and winding up of a University under the Act and these Regulations shall apply.

24. (1) The Commission may, with or without notice, carry out an audit, inspection or investigation on any institution as and when it is deemed necessary under these Regulations.

Impromptu quality audit, inspection or investigation.

(2) The Commission shall constitute a quality audit, inspection or investigation panel whose composition shall be determined depending on the objective of the audit, inspection or investigation.

(3) The audit, inspection or investigation panel referred to in paragraph (2) shall prepare and compile a report in a prescribed format and submit to the Commission.

(4) The Commission may issue a notice to the University setting out the issues that the University shall need to comply with arising from the audit, inspection or investigation and the University shall comply within the prescribed timelines.

(5) Where the University fails to comply within the notice period under paragraph (4), the procedure for revocation of the Charter, Letter of Interim Authority or Legal Order and winding up of a University under the Act and these Regulations shall come to effect.

25. (1) A University shall promote research in its academic programmes as prescribed in the standards and guidelines.

Promotion of quality teaching, research, industry linkages, innovation and community outreach.

(2) A University shall put in place appropriate policies, infrastructure, institutional framework and other resources necessary for promoting quality teaching, research, innovation, industry linkages and community outreach.

(3) A University shall adhere to the Constitution, the Act and other relevant laws, in developing and implementing mechanisms for research outputs.

26. (1) Universities shall submit accurate and updated data or information to the Commission in a prescribed format, as and when required. University data and information.

(2) Submitting falsified data or Information or misleading information to the Commission shall be an offence liable to penalties as prescribed in the Act.

27. Universities shall establish, implement and maintain Information and Communication Technology systems relating to their core functions as may be prescribed by the Commission from time to time. University information system.

PART III-ESTABLISHMENT OF A TECHNICAL UNIVERSITY

28. Any person intending to establish a technical University shall apply to the Commission in a prescribed format. Eligibility.

29. (1) Any institution that is to be declared a technical University shall satisfy the following criteria— Conditions for declaration.

- (a) be offering programmes in applied sciences that lead to application and practice of technical knowledge;
- (b) have appropriate technologies that are current or scalable;
- (c) show evidence of institution-industry linkages;
- (d) show evidence of requisite staff and other academic resources to support the technical programmes; and
- (e) be predominantly technical oriented.

(2) In the case of declaration in respect of a public institution, the provisions section 25(2) of the Act shall apply.

30. (1) An institution shall submit an application for accreditation to the Commission in the prescribed format. Procedure for application.

(2) An application for accreditation shall be accompanied with the following—

- (a) a draft Charter containing the particulars required to be provided by the University under section 13 of the Act; and
- (b) a self-evaluation report outlining the following—
 - (i) the philosophy and technical orientation of the institution;
 - (ii) a list and academic staff on, or expected to be on full-time employment with the institution and their qualifications;
 - (iii) the library facility and information services;
 - (iv) academic resources available for each programme expected to be offered at the institution;
 - (v) the financial resources that are available for the exclusive use of the institution, certified by a person qualified to practice under the Accountants Act, 2008;

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- (vi) an inventory of the physical facilities including land that are available for the exclusive use by the institution;
- (vii) student enrolment and student support services;
- (viii) development plans;
- (ix) research orientation and outputs;
- (x) a list of current or proposed academic programmes; and
- (xi) any other detail the Commission may specify.

31. (1) The Commission shall, before considering an application under regulation 30, appoint an inspection committee with the power to—

Inspection of a proposed technical Universities.

- (a) make enquiry into and for the purposes of ascertaining the veracity or otherwise of the particulars submitted under regulation 30(2);
- (b) make enquiry into the general academic, research, administrative, innovation, industry linkage, community outreach and social affairs of the institution and in particular confirm compliance to the criteria set out in regulation 25; and
- (c) make such other enquiry of relevance to the application as it may deem necessary.

(2) The Committee appointed under paragraph (1), shall consist of—

- (a) a Professor or associate Professor specialized in a technical discipline, who shall have experience in University management;
- (b) at least one academician of senior lecturer grade and above, in a technical discipline;
- (c) a University librarian;
- (d) a registered architect;
- (e) the relevant officers of the Commission; and
- (f) any other expert or professional that the Commission may determine to be necessary.

(3) The inspection committee shall submit a technical inspection report to the Commission.

32. (1) Upon receipt of the technical inspection report, the Commission shall deliberate on the merits of each application.

Consideration of technical inspection report.

(2) Where the Commission is satisfied that—

- (a) the draft Charter submitted forms a sound basis for the academic and administrative organization of the University;

- (b) the institution has effectively organized appropriate and adequate human, physical, financial and other resources into educational programmes;
- (c) the institution has a specific and unique mandate in teaching or research, in a technical area, as provided in the draft Charter;
- (d) the mandate in teaching or research is critical to national development or security; and
- (e) the institution satisfies the criteria set out in regulation 29, the Commission shall compile an accreditation report, as provided for in regulation 11, and recommend to the Cabinet Secretary that the institution be considered for declaration as a technical University in accordance with paragraph (2).

(3) Where the Commission is not satisfied in the manner indicated in paragraph (2), it shall not recommend declaration of the institution as a Technical University.

(4) An applicant whose application is declined may re-apply to the Commission for consideration.

33. (1) On receiving recommendation from the Commission for the declaration of a Technical University, the Cabinet Secretary, if satisfied, shall submit the same to the President.

Declaration of a technical University.

(2) The President, if satisfied, may declare the institution to be a Technical University in accordance with the provisions of section 25 of the Act by award of Charter.

34. The Commission shall audit a technical University in accordance with the quality audit procedures in accordance with the provisions of regulations 23 and 24.

Quality audit of a technical University.

35. (1) Any institution declared a technical University shall have—

Privileges of a technical University.

- (a) all the privileges of an accredited University as specified in section 20 of the Act; and
- (b) enhanced public funding as the Cabinet Secretary may determine.

PART IV-ESTABLISHMENT OF SPECIALISED DEGREE AWARDING INSTITUTIONS

36. Unless otherwise specified, these Regulations shall apply to specialized degree awarding institutions as they apply to all other universities, with necessary modifications as shall be provided in the instruments establishing or declaring the institutions.

General provision.

37. (1) A person who intends to establish a specialized degree awarding institution shall submit an application to the Commission in the prescribed format.

Eligibility and application.

(2) The application under paragraph (1), shall be accompanied by—

- (a) a Cabinet Resolution declaring the mandate of the proposed institution to be of strategic national importance and should be established as such; and
- (b) a proposal in a prescribed format setting out—
- (i) the specialized area of focus;
 - (ii) a draft Charter in the manner specified in section 24 of the Act;
 - (iii) curricula for the proposed academic programmes in accordance with the identified area of focus;
 - (iv) a registered Trust Deed for the University in case of a Private University;
 - (v) a description of the University library and information resources;
 - (vi) evidence of physical resources which includes, copies of title deeds, certificate of change of user, completion certificates, borehole log, tests of water, and architectural drawings;
 - (vii) the master plan, a strategic plan and a five-year financial plan which shall include a statement of availability of capital;
 - (viii) the terms and conditions of staff;
 - (ix) the regulations governing student conduct;
 - (x) the student handbook;
 - (xi) certificates by statutory or relevant certification bodies;
 - (xii) a synopsis of the applicant's academic resources in place;
 - (xiii) the financial management policy;
 - (xiv) a student management system; and
 - (xv) any other document that may be required by the Commission.
- (3) The requirements under this regulation shall apply with necessary modifications as per the provisions of section 24 of the Act.

38. (1) An institution shall be established as a specialized degree awarding or research institution if it—

- (a) is of strategic national importance as declared by the Cabinet;
- (b) offers or intends to offer academic programmes considered to be of national strategic importance;
- (c) has adequate and appropriate facilities for training at university education level in the specialized area of focus;
- (d) demonstrates capacity for linkages with universities or industry in the specialized area of focus;

Criteria for establishing specialized degree awarding or research institutions.

- (b) the character and the scope of openness of the University;
 - (c) the institutional ability and expertise of the sponsor for offering university education through Open, Distance and E-Learning;
 - (d) the resources, including land, Information and Communication Technology system and infrastructure, physical facilities, finances, staff, library and information services, teaching and research infrastructure, plant and equipment;
 - (e) the institutional framework in place to support Open, Distance and E-Learning;
 - (f) the development of learning materials;
 - (g) an evaluation of the appropriateness and adequacy of the resources to support the proposed academic programmes to be offered by the University, and the manner in which these resources shall be maintained on a long term basis;
 - (h) the proposed name and location of the University;
 - (i) the functions, aims, objectives, strategies and domain of the university, which shall be consistent with the needs of university education in Kenya;
 - (j) the form of governance through which the academic and administrative affairs of the university are to be conducted;
 - (k) an outline of the proposed academic programmes to be offered by the university;
 - (l) a timetable indicating the steps to be taken in the next four years towards the realization of the aims and objects for which the university is to be established;
 - (m) proof of ownership of land on which the seat of the proposed university is located, and evidence of a complement of facilities to cater for the academic programmes, co-curricular activities, staff and student welfare;
 - (n) a financial management strategy and policy;
 - (o) the appropriate assessment and certification system;
 - (p) a student management system;
 - (q) the staff and student support systems;
 - (r) the safety and security systems; and
 - (s) any additional information as may be required by the Commission.
- (3) The application under paragraph (1), shall have the following appendices—
- (a) a Cabinet Resolution declaring the mandate of the proposed national open university to be of strategic national importance and should be established as such;

- (b) a draft Charter;
 - (c) curricula for the proposed academic programmes designed in line with prescribed standards and guidelines;
 - (d) a description of the university library, e-library and information resources;
 - (e) evidence of physical resources which include, copies of title deeds, certificate of change of user, completion certificates, borehole log, tests of water, and architectural drawings;
 - (f) the master plan, strategic plan and a five-year financial plan which shall include a statement of availability of capital;
 - (g) the terms and conditions of service for staff;
 - (h) regulations governing student conduct;
 - (i) the student handbook;
 - (j) certificates by statutory or relevant certification bodies;
 - (k) a synopsis of the applicant's academic resources in place;
 - (l) the financial management policy;
 - (m) evidence of academic resources and Open, Distance and E-Learning as specified in the prescribed standards and guidelines; and
 - (n) any other document that may be required by the Commission;
- (4) Notwithstanding the provisions of regulation 37(2), special exemptions may be provided as and when necessary.

44. An institution shall be established as an Open University if it—

- (a) intends to embrace openness in offering university education;
- (b) offers or intends to offer academic programmes limited to distance and e-learning mode;
- (c) has adequate and appropriate academic resources to support distance and e-learning;
- (d) demonstrates capacity for linkages with universities and industry; and
- (e) has adequate and appropriately qualified staff to support the programmes.

Criteria for establishing an open university.

45. (1) Upon receipt of an application for the establishment of an Open University the Commission shall review the application and schedule a meeting or a series of meetings with the applicant to review the submitted documentation and evidence in respect of the resources indicated under regulation 43(2).

Accreditation process.

(2) The Commission shall then conduct an inspection to evaluate the available resources.

(3) For purposes of paragraph (2), the Commission shall set up an Inspection Committee to include—

- (a) at least two academicians of senior lecturer grade and above or experts of equivalent rank in the proposed disciplines one of whom shall have experience in open and distance learning;
- (b) a university librarian;
- (c) a registered architect;
- (d) relevant officers of the Commission; and
- (e) any other expert or professional that the Commission may determine to be necessary.

(4) The Inspection Committee shall prepare and submit an inspection report to the Commission.

46. (1) Upon consideration of the application, where the Commission is satisfied that—

Consideration of inspection report.

- (a) the particulars given under regulation 43 are likely to establish an Open University as contemplated in the Act;
- (b) the resources declared under regulation 43 are available, adequate and appropriate;
- (c) the applicant will offer programmes through distance and e-learning;
- (d) the conditions and environment provided will ensure openness of the university;
- (e) the submitted draft Charter forms a sound basis for the academic and administrative organization of the institution to offer academic programmes through open, distance and e-learning; and
- (f) the Open University, when established, is likely to attain and maintain on a long-term basis, standards set out in the Universities Standards and Guidelines,

the Commission shall compile an Accreditation Report, as provided for in regulation 11, and recommend to the Cabinet Secretary the establishment of an Open University.

(2) Where the Commission is not satisfied in the manner indicated in paragraph (1), it shall decline to recommend award of Charter to the institution as an Open University.

(3) An applicant whose application for award of Charter as an Open University is declined may re-apply to the Commission for consideration.

47. (1) On receiving a recommendation from the Commission for the establishment of an Open University, the Cabinet Secretary shall, if satisfied, recommend the establishment of the Open University to the President.

Award of Charter.

(2) The President may on the recommendation of the Cabinet Secretary, and with the approval of Parliament, award Charter to

establish an Open University in accordance with the provisions of section 24 of the Act.

(3) The award of Charter shall confer the powers, rights and privileges as shall be set out in the Charter.

(4) An Open University shall set up governance organs which may include the Council, Chancellor, Vice Chancellor, Senate, University Management Board and Student Association or their equivalent for purposes of running the academic programmes through open, distance and e-learning.

(5) A Charter as specified in section 24 of the Act issued under these Regulations shall be published by notice in the *Gazette*.

48. The Commission shall audit an Open University as provided for in these Regulations.

Quality audit of an open university.

PART V-ESTABLISHMENT OF A CONSTITUENT COLLEGE

49. (1) A chartered university which intends to establish a constituent college in Kenya shall apply in writing to the Commission in the prescribed format for accreditation following consultation between the Cabinet Secretary and the Commission.

Eligibility.

(2) The nature of the consultation specified under section 20(3) of the Act, between the Cabinet Secretary and the Commission regarding the establishment of a constituent college shall entail—

- (a) confirmation by the Commission that the application for the establishment of a constituent college has complied with minimum requirements which shall include submission of—
 - (i) a constituent college proposal in a format prescribed by the Commission; | > when
 - (ii) documentary evidence of academic resources available to support programmes at the proposed Constituent College;
 - (iii) list of proposed academic programmes, which shall be accredited programmes of the mentoring university and authorised by the Senate to be offered in the constituent college;
 - (iv) a draft Legal Order for the establishment of the constituent college; and
 - (v) any other information the Commission may require.
- (b) submission by the Commission of a technical report and recommendation upon conducting an inspection to evaluate the available resources in the proposed Constituent College in accordance with the procedures set out in regulation 6 (2)(3) and (4).

50. (1) The Commission, under regulation 49, may or may not recommend the establishment of a Constituent College and shall communicate the recommendation to the Cabinet Secretary.

Consideration for establishment of a constituent college.

(2) The Cabinet Secretary shall, if satisfied, by Order published in the Gazette, establish or declare the institution to be a constituent college of the mentoring University.

51. (1) A constituent college shall—

Operation and tenure.

- (a) be a body corporate with an independent governance structure;
- (b) commence with the number of accredited academic programmes of the mentoring University, constituent with the identified niche for which adequacy of academic resources shall verified by the Commission;
- (c) develop curricula for any subsequent academic programmes for accreditation by the Commission; and
- (d) award qualifications to students through the Senate of the mentoring University.

(2) A constituent college shall be subjected to annual inspection as provided for in these Regulations.

(3) A constituent college may make a formal application for award of Charter.

(4) Notwithstanding the above provisions, a Constituent College shall be expected to comply with the provisions of regulation 22.

52. The provisions of regulation 8 on revocation of a Letter of Interim Authority shall apply *mutatis mutandis* to the revocation of a Legal Order establishing a Constituent College.

Revocation of a Legal Order establishing a constituent college.

PART VI: ESTABLISHMENT OF A UNIVERSITY CAMPUS

53. A chartered university authorized to operate in Kenya, intending to establish a university campus, shall apply to the Commission for authority to establish a university campus, prior to commencement.

Eligibility.

54. (1) An application under regulation 53 shall be accompanied by—

Proposal particulars and resources.

- (a) documentary evidence of the Senate and the Council approval;
- (b) a campus establishment policy;
- (c) a campus profile with documentary evidence in the prescribed format, highlighting—
 - (i) the location and address;
 - (ii) justification for establishment of the campus;
 - (iii) the physical resources, library facility, and equipment available for the exclusive use of the campus;
 - (iv) full time academic and administrative staff dedicated to the campus;

- (v) the proposed quality assurance systems;
 - (vi) student enrolment;
 - (vii) list of accredited academic programmes proposed to be offered at the campus; and
 - (viii) evidence of ownership of land on which the campus shall be situated.
- (d) projection of student enrolment; and
- (e) the financial resources including the financial viability and a five-year financial projection plan.

55. (1) The Commission shall consider an application under regulation 53 and approve the establishment of a campus where—

Authority to operate a campus.

- (a) such an establishment is justified;
- (b) the resources available are adequate to support the proposed programmes and student enrolment and that they meet the requirements of the Universities Standards and Guidelines; and
- (c) adequate measures have been put in place to assure quality.

(2) The Commission shall notify the university of the decision under paragraph (1).

(3) the approval for establishment referred to in paragraph (1) shall either lead to provisional accreditation or full accreditation for three years after which the university shall seek re-accreditation of the campus.

(4) Where provisional accreditation has been given it will be for a specified period.

(5) An accredited campus shall be required to apply for re-certification six months before the expiry of three years of operation from the effective date of accreditation.

(6) Where the Commission rejects an application under paragraph (1), it shall furnish the applicant with reasons for the rejection of the application.

56. (1) A University campus shall—

Operations and tenure.

- (a) be the smallest institutional unit of a University;
- (b) have localized administrative structures clearly linked with the main campus of the University;
- (c) commence with the number of accredited academic programmes of the University for which adequacy of academic resources has been verified by the Commission;
- (d) ensure that the Commission approves the mounting of any additional academic programmes; and
- (e) not relocate from the accredited site unless with prior approval of the Commission.

(2) A University campus shall not share premises with an incompatible business or be situated in unsuitable health and or environmental conditions.

57. (1) A University intending to establish an Open, Distance and E-Learning Centre shall apply for approval to the Commission.

Open, Distance
and E-Learning
Centre.

(2) The procedure for establishing an Open, Distance and E-Learning centre shall be as provided for in regulations 53, 54 and 55.

(3) An Open, Distance and E-Learning Centre may be within the main campus of a University or at a separate accredited site.

(4) Where the Open and Distance Learning Centre is at a separate accredited site from the main campus, it shall be a coordinating and support facility to bring services closer to students undertaking online and blended courses.

(5) An Open, Distance and E-Learning Centre shall be subject to monitoring procedures of a campus.

PART VII-ACADEMIC PROGRAMMES

58. (1) All Universities, including proposed Universities, and proposed specialized degree awarding institutions shall submit all their new academic programmes to the Commission for accreditation or approval.

Accreditation or
approval of
academic
programmes.

(2) For the purposes of paragraph (1), a University submitting an academic programme for accreditation or approval shall ensure—

- (a) it has institutionalized regular internal review system of its academic programmes; and
- (b) the Vice-Chancellor of the University or the equivalent for the case of specialized degree awarding or research institution has signed a commitment indicating that the applicant—
 - (i) has complied with the prescribed process of curriculum design and development;
 - (ii) has ensured the accuracy and up dated the report on academic resources to support the academic programme; and
 - (iii) shall act on the Commission's evaluation report on the programme within the stipulated timelines.

(3) Academic programmes submitted under paragraph (1) shall be accompanied with—

- (a) a report on the needs assessment of the proposed academic programme;
- (b) signed minutes of the Senate meeting at which the proposed programme was approved;
- (c) a list of existing academic programmes, their student enrolment and available learning facilities; and
- (d) a comprehensive report of academic resources for the support of the proposed academic programme.

(4) The admission criteria and credit transfers for academic programmes shall be as provided for in the prescribed standards and guidelines.

(5) For purposes of paragraph (1), the Commission shall—

- (a) evaluate the proposed academic programmes prior to their launch, by engaging the services of appropriately qualified peer reviewers who shall be from—
 - (i) the Universities, in which case, they shall—
 - (aa) be holders of doctorate degrees in the relevant area;
 - (bb) be in the rank of at least a Senior Lecturer; and
 - (cc) in special cases, be at least a lecturer and holder of a master's degree in the relevant area with more than five years' working experience,
 - (ii) industry and professional bodies, in which case, they shall be—
 - (aa) holders of a master's degree in a relevant field with more than five years' working experience in the field at senior position; and
 - (bb) registered members of professional bodies where applicable,
- (b) appoint a programme evaluation panel of peer reviewers for every academic programme under evaluation;
- (c) constitute the programme evaluation panel appointed in paragraph (2)(b) whose members will individually analyse and consider the curriculum for—
 - (i) cohesiveness, breadth, and depth of the content of the academic programme;
 - (ii) purpose and goals of the academic programme;
 - (iii) adherence to set standards and guidelines for structure of the academic programme;
 - (iv) appropriateness of the modes of delivery of the academic programme;
 - (v) appropriateness of the mode of assessment of the academic programme;
 - (vi) adherence to the academic character, niche and the vision and mission of the University; and
 - (vii) appropriateness and relevance of the academic programme to the job market, industry and development goals,
and prepare individual evaluation reports on the curriculum in the prescribed format.

- (d) convene a meeting of peer reviewers in paragraph (2)(b) to consider the individual reports and compile a consolidated evaluation report; and
- (e) constitute a technical inspection team consisting of peer reviewers and relevant officers of the Commission to carry out a site inspection and compile an inspection report on—
 - (i) availability, appropriateness, adequacy, and accessibility of the academic resources for the support of the academic programmes;
 - (ii) appropriateness of the learning environment of the University; and
 - (iii) co-curricular activities offered by the University,

(6) Where, after deliberations on the findings from the reports in paragraph (5)(c) and (e) the Commission is satisfied that the University has appropriately developed a curriculum and put in place adequate and appropriate resources that meet the requirements under these Regulations, the prescribed standards and guidelines, the Commission shall consider the programme for approval and notify to the University.

(7) The accreditation and approval of all academic programmes shall be specific to a given mode of delivery which may include—

- (a) face to face;
- (b) blended learning; or
- (c) online.

(8) Notwithstanding the generality of paragraph (7), the accreditation or approval shall be construed to apply to the specific programme content, learning design, intent, structure, delivery mode, academic resources, and assessment mode submitted in the application for accreditation or approval of the specific academic programme.

(9) A university seeking accreditation or approval of academic programmes under online and blended modes of delivery shall conform to the Universities Standards and Guidelines set for Open, Distance and E-Learning.

(10) The evaluation of a proposed academic programme shall be terminated if—

- (a) the institution fails to address the recommendations of a Commission's evaluation report within the prescribed timelines; or
- (b) the institution submits a plagiarized academic programme beyond the limits as set out in the Universities Standards and Guidelines.

(11) Academic programmes leading to postgraduate qualification shall have curriculum content that enhances research knowledge and practice as provided for in the Universities Standards and Guidelines.

(12) The validity of accreditation or approval of an academic programme shall be six years.

(13) A revised academic programme submitted to the Commission before the expiry of the validity period shall be deemed to be a new programme, thus warranting evaluation, if its core course content is over thirty percent different from the programme in the original curriculum.

(14) For purposes of paragraph (5), the procedure for re-accreditation or re-approval shall be as provided for in the prescribed standards and guidelines.

(15) The evaluation of Diploma and Certificate shall be in line with a criteria set in the Universities Standards and Guidelines.

59. (1) The Commission may consult professional bodies or associations when accrediting professional academic programmes.

(2) The Commission may formulate, develop and implement Standards and Guidelines for engaging professional bodies.

60. (1) A university or a specialized degree awarding institution shall launch an academic programme only with the prior accreditation or approval by the Commission.

(2) Notwithstanding the provisions of paragraph (1), a Constituent College or a campus shall launch academic programme only with prior accreditation or approval by the Commission as provided for in the Universities Standards and Guidelines.

(3) A university shall ensure that all academic programmes meet the requisite instructional hours irrespective of the mode of delivery.

(4) A university shall not exceed the approved enrolment in academic programmes as determined by the Commission guided by the available academic resources.

61. The conditions for credit accumulation and transfer for certificate, diploma and degree programmes shall be as specified in the Universities Standards and Guidelines and applicable policies and criteria.

62. (1) A University has the primary responsibility for internal quality assurance of their academic programmes.

(2) Each University shall establish and operationalize a Curriculum Development Committee to guide its programme development processes.

(3) Each university shall undertake a needs assessment, involving relevant stakeholders, for proposed programmes.

(4) The university shall provide documentary evidence that all academic programmes have gone through the relevant academic organs which shall include —

Engagement of professional bodies in accreditation or approval of academic programmes. Launch of academic programmes by Universities.

Conditions for credit accumulation and transfer.

Quality assurance systems for academic programmes.

- (a) the departmental board;
- (b) the faculty or school board; and
- (c) the Senate.

(5) A university shall review its curricula in accordance with regulation 57(5) and (6).

(6) A university shall have mechanisms to ensure security and integrity of the examination process including security of academic certificates and awards.

(7) Each university shall carry out self-assessment of its programmes for every cohort and submit a self-assessment report to the Commission for purposes of external review in accordance with criteria set out in the prescribed standards and guidelines.

**PART VIII—A FOREIGN UNIVERSITY COLLABORATING WITH
A LOCAL UNIVERSITY OR INSTITUTION AUTHORIZED TO
OPERATE IN KENYA**

63. (1) A foreign University intending to collaborate with a local university or institution authorized to operate in Kenya shall—

Requirements for
a foreign
University to
collaborate.

- (a) apply to the Commission in the prescribed format for grant of authority to collaborate with a local University or institution in Kenya in the provision or offer of its academic programme or programme of instruction leading to the award of a degree, a double degree, a dual or multiple degree, a twinning degree or a joint degree, where applicable;
- (b) only commence the collaborative arrangement upon grant of authority to collaborate by the Commission;
- (c) be accredited and recognized in the country of origin;
- (d) have the academic programme to be offered under collaboration also accredited and on offer in the country of origin; and
- (e) have graduated at least one cohort of students in the country of origin in the academic programme to be offered under collaboration.

64. A local university or institution entering a collaborative arrangement with a foreign university under these Regulations—

Obligations of a
local collaborating
University or
institution.

- (a) shall provide the requisite resources to support the academic programme and where applicable, evidence of approval by the relevant professional body; and
- (b) may collaborate with a maximum of two foreign universities to offer a maximum of two academic programmes under each collaboration.

65. A foreign university entering a collaborative arrangement with a local university or institution under these Regulations shall—

Obligations of a
foreign
collaborating
University.

- (a) collaborate with a local institution to offer a maximum of two degree programmes; and
- (b) collaborate with a maximum of two local universities or institutions.

66. The Academic programmes offered under collaboration between a foreign University and a local University or institution in Kenya shall be—

Academic programmes under collaboration.

- (a) accredited and recognized in the country of origin of the foreign University and the Senate of the local University or institution, where applicable;
- (b) approved by the Senate of the collaborating University or Universities and by the Commission, in the case of a degree, a double degree, a dual or multiple degree, a twinning degree or a joint degree, where applicable; and
- (c) relevant to a specific market niche in Kenya.

67. (1) A foreign University collaborating with a local University or institution shall submit to the Commission a duly signed Memorandum of Understanding between itself and the collaborating local university or institution.

Collaboration agreement.

(2) The Memorandum of Understanding under paragraph (1) shall set out details of—

- (a) the nature of the collaboration;
- (b) the profile of the collaborating foreign university and the local university or institution;
- (c) the degree to be awarded and the name of the awarding university or institution, in the case of collaboration between a foreign university and a local university;
- (d) the rights and obligations of the students and staff in the programme under collaboration;
- (e) the lead institution in the case of joint, multiple, double, dual or twinning degrees;
- (f) the rights and obligations of the collaborating universities or institutions;
- (g) financial arrangements; and
- (h) mechanisms of variation and termination of the memorandum.

68. (1) The admission of students into programmes offered under collaboration shall be in line with the existing university admissions criteria in Kenya.

Admission of students under collaboration.

(2) In the case of joint, multiple, double, dual and twinning degrees the students shall also be required to meet the minimum admission criteria of the foreign university collaborating with a local university or institution.

69. (1) Upon receipt of the application referred to in regulation 63, the Commission shall appoint a Collaboration review committee which shall comprise of—
- Collaboration review committee.
- (a) at least two appropriately qualified peer reviewers; and
 - (b) relevant officers of the Commission.
- (2) The collaboration review committee shall—
- (a) verify the documents submitted under regulation 62;
 - (b) inspect and verify the academic resources, management and administrative structures pertinent to the academic programmes of the local university or institution; and
 - (c) make such other follow-up inquiry relevant to the collaboration processes as may be deemed necessary.
- (3) The Collaboration Review Committee shall submit a written report to the Commission.
70. (1) The Collaboration Review Committee shall submit a report of its findings under regulation 59 to the Commission.
- Approval of collaboration.
- (2) The Commission may, upon confirmation that the parties to the collaborative agreement meet conditions set out under these Regulations, approve the collaboration and grant authority to collaborate.
 - (3) The Commission shall issue a Certificate of Authority to collaborate to the foreign university and local university or institution.
 - (4) The Commission shall publish the approved collaborations on the Commission website and the particulars of the academic programme in respect of which the authority is granted.
 - (5) Where parties to the collaborative agreement fail to address the issues highlighted in the report under regulation 69(2), the Commission shall reject the application for collaboration.
 - (6) Notwithstanding the provisions of paragraph (5), the Commission shall accord the application a fair administrative process.
71. The Commission shall maintain an up to date register of Universities or Institutions granted authority to collaborate under these Regulations.
- Register of universities or institutions granted authority to collaborate.
Monitoring of universities or institutions granted authority to collaborate.
72. The Commission may conduct regular or impromptu inspections, investigations or audits, on Universities or Institutions granted authority to collaborate under these Regulations, in accordance with the Universities Standard and Guidelines.
73. The Commission may issue a notice of intention to revoke a Certificate of Authority to Collaborate, in writing, outlining the reasons for the intention to revoke.
- Notice to revoke authority to collaborate.
74. (1) The Commission may revoke a certificate of authority to collaborate, on its own motion or upon application by any of the
- Revocation of authority to collaborate.

collaborating partners before the expiry of the term of the collaboration on the following reasons—

- (a) in the opinion of the Commission, such revocation is in the interest of University education in Kenya;
- (b) any of the Universities or Institutions in the collaboration is in breach of the terms and conditions upon which the Authority to Collaborate was granted;
- (c) any of the Universities or Institutions is no longer offering the academic programme under collaboration for which the Authority to Collaborate was granted;
- (d) any of the Universities or Institutions has ceased to be an accredited or recognized University or Institution;
- (e) such changes have since occurred which, if they had been in existence at the time of application for the Authority to Collaborate, such Authority to collaborate would not have been granted; and
- (f) any other reason that the Commission may deem necessary.

(2) Where a Certificate of Authority to Collaborate has been revoked—

- (a) such revocation shall not affect the academic awards granted under the collaboration before the date of revocation; and
- (b) the local collaborating University or Institution shall make necessary arrangements for the ongoing students to complete their programmes.

(2) Notwithstanding the provisions of paragraph (2), the collaborating institutions shall be accorded fair administrative action as provided for under these Regulations.

PART IX—A LOCAL UNIVERSITY COLLABORATING WITH A LOCAL UNIVERSITY OR INSTITUTION AUTHORIZED TO OPERATE IN KENYA

75. (1) A local university shall apply to the Commission in the prescribed format, for grant of authority to collaborate with a local university or institution authorized to operate in Kenya.

Collaboration with
local university or
institution.

(2) The application referred to in paragraph (1) shall be submitted together with copies of the—

- (a) proposed contract for collaboration between the applying local university and the university or institution with which it intends to collaborate;
- (b) academic programmes to be offered under the collaboration;
- (c) the nature of collaboration and the type of degree awarded;
- (d) certificate of accreditation or registration of local university or local institution;
- (e) evidence of accreditation status of the academic programmes to be offered under the collaboration.

(3) The contract referred to in paragraph (2) (a), shall specify –

- (a) the terms;
- (b) the modalities of teaching;
- (c) the assessment and awards system in respect of the academic programmes offered;
- (d) the rights and obligations of the collaborating universities or institutions;
- (e) the academic resources devoted to the academic programmes in the local institution in accordance with the prescribed standards and guidelines;
- (f) the management and administration of the academic programme; and
- (g) the financial arrangements for the collaboration.

76. The review of a collaborative arrangement shall be as provided under regulation 69.

Collaboration review committee.

77. The Commission may grant authority to collaborate, upon confirmation that all the requirements for grant of authority to collaborate as prescribed under regulation 70 have been met.

Grant of authority to collaborate.

78. The Commission shall publish the grant of authority to collaborate under these Regulations on the Commission website.

Publication of grant of authority to collaborate.

79. The Commission shall maintain and update a register of universities or institutions granted authority to collaborate under these Regulations.

Register of universities or institutions granted authority to collaborate.

80. The Commission may conduct regular or impromptu inspections, investigations and audits, on universities or institutions granted authority to collaborate under these Regulations, in accordance with the prescribed standard and guidelines.

Monitoring of universities or institutions granted authority to collaborate.

81. The Commission may issue a notice of intention to revoke a certificate of authority to collaborate, in writing, outlining the reasons for revocation.

Notice to revoke authority to collaborate.

82. (1) The Commission may revoke a certificate of authority to collaborate, on its own motion or upon application by any of the collaborating universities or institutions before the expiry of the term of the collaboration if –

Revocation of authority to collaborate.

- (a) in the opinion of the Commission, such revocation is in the best interest of university education in Kenya;
- (b) any of the universities or institutions in the collaboration is in breach of the terms and conditions upon which the certificate of authority to Collaborate was issued;
- (c) any of the universities or institutions is no longer offering the academic programme under collaboration for which the certificate was issued;
- (d) any of the universities or institutions has ceased being an accredited or recognized university or institution; or

- (e) such changes have since occurred which, if they had been in existence at the time of application for the certificate of authority to collaborate, such authority to collaborate would not have been granted.
- (2) Where a certificate of authority to collaborate has been revoked—
- (a) such revocation shall not affect the academic awards granted under the collaboration before the date of revocation; and
- (b) the local collaborating University or Institution shall make necessary arrangements for the ongoing students to complete their programmes.
- (3) The Commission shall publish the revocation of authority to collaborate on the Commission website.
- (4) Notwithstanding the provisions of paragraph (1), the collaborating institutions shall be accorded fair administrative action as provided for under these Regulations.

PART X-LICENSING OF STUDENT RECRUITMENT AGENCIES
AND ACTIVITIES OF FOREIGN UNIVERSITIES OR
INSTITUTIONS

83. (1) A student recruitment agency or a foreign institution intending to recruit students from Kenya shall apply for a licence to the Commission, in the prescribed format.

Application for a licence as a student agency.

(2) For purposes of paragraph (1), agencies of foreign universities and institutions include—

- (a) foreign universities or institutions directly advertising, exhibiting or recruiting students;
- (b) agencies for student recruitment into universities or institutions;
- (c) agencies for advertising, exhibiting and marketing universities or institutions;
- (d) a confederation of agencies for advertising, exhibiting and marketing universities or institutions; and
- (e) a confederation of agencies for student recruitment into universities or institutions.

(3) The Commission may from time to time prescribe standards and guidelines to govern student recruitment agencies and the activities of foreign universities or institutions in Kenya.

84. (1) A student recruitment agency shall be eligible to be licensed to operate in Kenya if such agency—

Conditions for operating a student recruitment agency.

- (a) is registered under the laws of Kenya;
- (b) is a legal entity in the country of origin;
- (c) represents an accredited university or institution in the country of origin;

- (d) has a physical address; and
- (e) provides evidence of Memorandum of Understanding or Agreement with a university or institution it represents.

(2) Foreign missions may be allowed to operate under short term licenses as may be prescribed by the Commission from time to time.

85. (1) A license to operate under this provision shall be valid for a period of one year, and may be renewed subject to the agency's adherence to the conditions set out by the Commission.

License to operate as a student recruitment agency.

(2) The Commission may cancel a license to operate if it is of the opinion that the agency is in violation of the terms and conditions under which the license was issued.

86. An agency to which a licence is issued may—

Effects of the license.

- (a) recruit qualified students for specified universities or institutions;
- (b) carry out marketing and liaison activities for the universities or institutions it represents;
- (c) provide student services; and
- (d) advertise its services.

87. (1) An agency licensed to operate under these Regulations shall be obligated to—

Obligations of an agency.

- (a) recruit students who are qualified in accordance with the admissions criteria set out by the Commission;
- (b) place students into authorized, accredited and recognized universities or institutions;
- (c) carry out due diligence to establish the accreditation status of the universities or institutions and academic programmes;
- (d) operate within the relevant laws in Kenya;
- (e) ensure that all instructions issued by the Commission under these Regulations are complied with; and
- (f) provide student services.

88. (1) The Commission shall maintain in its website a register of all agencies licensed under these Regulations.

Register of student recruitment agencies.

(2) A person who intends to enroll in any advertised degree programme, including an online one, may seek clarification from the Commission, on the accreditation status of the programme and the university or institution in question.

89. (1) A foreign University intending to recruit students directly from Kenya shall apply for a licence to the Commission in the prescribed format.

Activities of foreign universities or institutions.

(2) A license to operate under this provision shall be valid for a specified period of time, and may be renewed subject to the agency's adherence to the conditions set out by the Commission.

(3) A foreign University or Institution wishing to recruit students directly from Kenya shall submit to the Commission evidence of the accreditation status of the university or institution in the home country.

(4) A foreign university or institution licensed to recruit students shall observe the highest standards of student recruitment, advertising, exhibiting and marketing of its activities in Kenya.

(5) A foreign university or institution licensed to recruit students shall disclose to the prospective students all services rendered to students before and after they leave for their studies in the foreign university or institution.

(6) A foreign university or institution licensed to recruit students shall operate from an identifiable, designated, appropriate and adequate operational physical space as specified in the Universities Standards and Guidelines.

(7) A foreign university or institution licensed to recruit students shall have adequate and competent human resources to execute its mandate as specified in the Universities Standards and Guidelines.

90. (1) The Commission may conduct regular and impromptu inspections, investigations or audits, on a Student Recruitment Agency to—

Monitoring of student recruitment agencies.

(a) confirm the extent to which the Agency is complying with the Act, these Regulations, the prescribed standards and guidelines and other statutory requirements; and

(b) assess whether the Agency can continue recruiting students.

(2) The audit, inspection or investigation referred to in paragraph (1) shall be conducted by an Audit, Inspection or Investigation Committee or an authorized officer or officers as specified in the standards and guidelines.

(3) The Audit, Inspection or Investigation Committee or authorized officer or officers shall submit a written report to the Commission.

(4) The Commission shall give written submissions to the Agency inspected, detailing the issues to be addressed within a specified time frame to ensure compliance with the Act, Regulations, Standards and Guidelines and other statutory requirements.

(5) If the matters outlined in the report pursuant to paragraph (3) contravene the objects for which the agency was licensed, the Commission may revoke the license.

(6) An agency or institution which is aggrieved by an act or decision of the Commission under this regulation may appeal as provided for under these Regulations.

(7) An Agency which, without the written consent of the Commission, uses the name of a foreign university or institution in furtherance of or in connection with any advertisement for any trade or business, commits an offence and shall be liable, on conviction, to penalties set out under the Act and these Regulations.

PART XI— RECOGNITION AND EQUATION OF DEGREES,
DIPLOMA AND CERTIFICATES CONFERRED OR AWARDED
BY A FOREIGN UNIVERSITY AND INSTITUTION

91. (1) Holders of degrees, diplomas and certificates conferred or awarded by foreign universities and institutions may seek recognition or equation of qualifications from the Commission.

Scope of the service.

(2) The Commission may recognize and equate degrees, diplomas and certificates conferred or awarded by foreign universities and institutions in accordance with the prescribed standards and guidelines.

(3) The recognition or equation of qualifications issued under this Regulation shall not be deemed to be an award or a replacement of a qualification.

92. (1) The following principles shall apply in respect of the assessment of foreign qualifications under this regulation—

Principles of recognition and equation.

- (a) holders of foreign qualifications shall have adequate access, upon request, to an assessment of their qualifications;
- (b) the procedures and criteria for the assessment of foreign qualifications shall be transparent, coherent and reliable;
- (c) in recognizing foreign qualifications, both national and international legal frameworks shall be applied;
- (d) where the qualifications presented cannot be recognized, the Commission shall inform the applicant the underlying reasons;
- (e) while the aim of the Commission shall be to assess foreign qualifications in qualitative terms, the assessment may rely on both qualitative and quantitative criteria, where quantitative criteria are considered relevant to quality and may supplement qualitative criteria; and
- (f) recognition shall be granted wherever possible, unless there is substantial difference in terms of content, profile, workload, quality and learning outcomes with similar programmes available locally.

93. (1) The Commission shall evaluate applications made on recognition and equation of foreign degrees, diplomas and certificates conferred or awarded by foreign universities and institutions.

Evaluation of foreign qualifications.

(2) In its evaluation under paragraph (1), the Commission shall—

- (a) establish whether a university or institution belongs to a country operating under the auspices of any international or regional convention;
- (b) establish whether the higher education institution belongs to the countries operating under the auspices of any international or regional conventions;
- (c) take due account of the established quality assurance system, including the system of formal evaluation of higher

- education institutions and programmes in the country of origin;
- (d) identify the qualification in the system of the country in which recognition is sought which is most comparable to the foreign qualification, and where available, the Commission shall refer to the National Qualifications Framework, Regional Qualifications Frameworks and global conventions;
 - (e) consider differences in the content, profile, workload, quality and learning outcomes. In such cases the evaluation shall seek to establish alternative recognition that may include—
 - (i) recognition of the foreign qualification as compared to a qualification of Kenya, but not that indicated by the applicant;
 - (ii) partial recognition of the foreign qualification; and
 - (iii) full or partial recognition of the foreign qualification subject to the applicant successfully taking additional examinations, further study, aptitude tests or other compensatory measures;
 - (f) take into account prior learning, credit transfer, different forms of recognised access to higher education, joint degrees and lifelong learning in recognition of some academic qualifications which are awarded in short duration, without diminishing the learning outcomes. A decision not to grant recognition shall not be motivated by duration alone;
 - (g) consider previous levels of education only where these levels have a bearing on the outcome of the evaluation, and shall as far as possible, be limited to qualifications of a level immediately preceding the qualification for which recognition is sought;
 - (h) apply best professional skills or practices and take note of all relevant information; and
 - (i) exercise due diligence when taking note of the learning outcomes and the education programme during evaluation.
- (3) Where qualifications are under previous higher education structures, the following principles shall apply—
- (a) the field in which the qualification is awarded as well as activities undertaken within the field by the applicant after attaining the qualification;
 - (b) the Qualifications Framework and status of the qualification in the issuing country;
 - (c) older qualifications shall be recognized in comparison with recent and similar qualifications issued in Kenya, taking into account the purpose for which such recognition is sought and relevant work experience; and

- (d) learning outcomes, the quality of the academic programme and its duration shall be taken as some of the indicators of the level of achievement reached at the end of the programme.

94. The criteria for recognition and equation of qualifications shall be as provided for in accordance with the prescribed Universities Standards and Guidelines.

Criteria for recognition and equation of qualifications.

PART XII—GENERAL PROVISIONS

95. The fees chargeable for services rendered under these Regulations shall be determined and *Gazetted* by the Commission from time to time.

Fees.

96. (1) A person who, without the written consent of the Commission, uses the name "Commission for University Education" or the name "University" in furtherance of or in connection with any advertisement for any trade, business, calling or profession, commits an offence and shall be liable to penalties set out under the Act and these Regulations.

Penalties.

(2) If an offence under the Act or these Regulations is committed by a university or other body corporate with connivance of or attributable to any officer of the university or any other person who purports to act in any such capacity, that university, officer or the other person shall be guilty of that offence.

97. Any person or institution who or which is aggrieved by an act or decision of the Commission taken in accordance with any of the provisions of these Regulations, who or which desires to question that act or decision, or any part thereof, may, within thirty days of the date of such act or decision—

Review and appeals.

- (a) seek review of the decision in writing to the Commission which shall review and decide on the matter in question and respond within a period of three months; and
- (b) appeal to the Cabinet Secretary thereafter, if not satisfied with the decision of the Commission following the results of the review.
- (c) upon appeal, the Cabinet Secretary may give such orders or instructions as may be deemed necessary within a period of three months.

98. (1) A Chartered University, a university being a holder of Letter of Interim Authority, or a constituent college that was in existence before the coming into operation of these Regulations shall be deemed to be a Chartered University, a university being a holder of Letter of Interim Authority, or a constituent college under these Regulations

Transitional arrangements.

(2) Any University college, campus, or Open, Distance and E-Learning Centre that was in existence before the enactment of these Regulations shall be deemed to be a university college, campus or Open, Distance and E-Learning Centre established under these Regulations.

(3) Any foreign University which at the commencement of these Regulations is providing programmes in collaboration with a local University or tertiary institution shall be deemed to have been authorized to collaborate under these Regulations.

(4) Any University which at the commencement of these amendments is offering academic programmes approved or accredited under the repealed Regulations shall be deemed to have been approved or accredited under these Regulations.

99. Where a period of time specified in the repealed Regulations is current at the commencement of these Regulations, these Regulations shall have effect as if the corresponding provisions had been in force when that period began to run.

Continuation of time.

100.(1) The Commission may from time to time prepare and publish in the Gazette a set of standards, herein referred to as "Universities Standards and Guidelines", to govern establishment of proposed universities and the performance, operations and general conduct of all universities authorized to operate under these Regulations.

Preparation of standards and guidelines.

(2) Notwithstanding the generality of paragraph (1), the Universities Standards and Guidelines may, in particular set out minimum standards among others on—

- (a) governance and management;
- (b) establishment of universities or institutions
- (c) physical facilities;
- (d) academic programmes;
- (e) library facilities and information services;
- (f) human resources;
- (g) financial resources;
- (h) the Open, Distance and e-Learning;
- (i) institutionalization of quality assurance;
- (j) collaborations;
- (k) recognition and equation of qualifications;
- (l) the Student Recruitment Agencies;
- (m) university information and data;
- (n) information and Communication Technology;
- (o) safety and security;
- (p) revocation and winding up of university or institution;
- (q) mergers and acquisitions;
- (r) fair administrative procedures; and

(s) any other standard deemed necessary by the Commission.

(3) A University shall appoint and promote academic staff as provided in the prescribed standards and guidelines.

101.(1) The standards contained in the Schedules are declared to have been prepared and published in accordance with section 5 (1) (c) of the Act.

Declaration of standards and guidelines.

(2) The Commission may add to, delete or otherwise amend the contents of the Schedules provided, however, that any amendment made in accordance with this Regulation shall be published in the Gazette.

102. The Universities Regulations, 2014 are revoked.

Revocation of LN. 76 of 2014.

FIRST SCHEDULE
GOVERNANCE AND MANAGEMENT OF A UNIVERSITY

(r. 13(b))

1. Sponsor
 - (1) The Sponsor of a public University shall be the Government of Kenya whilst the Sponsor of a private University shall be an individual or a duly registered or incorporated legal entity.
 - (2) A Sponsor shall—
 - (a) apply for the establishment of the University; and
 - (b) commit to the overall financing, development, implementation, construction, maintenance and management of the University in accordance with the provisions of the Act; and
 - (3) Where a Sponsor intends to change name of the university or sponsorship of a University, or intends to withdraw sponsorship of a university, shall apply to the Commission as provided for in these Regulations.
 - (4) In carrying out his or her functions, the sponsor may appoint a Board of Trustees to hold the University in trust.
2. Board of Trustees
 - (1) A Board of Trustees shall—
 - (a) be constituted in accordance with the Trustees (Perpetual Succession) Act, Cap 164;
 - (b) have members representing the interests of the Sponsor but, members of the sponsoring family in case of an individual sponsor or members of a sponsoring entity, in case of an institutional sponsor, shall not constitute more than a third of the Board of Trustees; and
 - (c) have a third of its members being Kenyans in the case of a foreign sponsor.
 - (2) The functions of the Board of Trustees shall be as specified in the Universities Act.
3. Chancellor
 - (1) The functions of a Chancellor shall be as stipulated in the Universities Act.
 - (2) The procedures of appointment of a Chancellor of a public university shall be as stipulated in the Universities Act.
 - (3) A private university shall provide in its Charter, or in the case of an institution with a Letter of Interim Authority, in its proposal, the procedure for appointment of a Chancellor which shall specify among other things, the tenure and qualifications.
 - (4) Every University shall clearly articulate the powers and privileges of the Chancellor in its Charter, or in the case of an institution with a Letter of Interim Authority, in its proposal.

- (5) The Vice-Chancellor shall, at least twice every year, brief the Chancellor on the performance of the University.
 - (6) The Chancellor shall, on an annual basis, hold an official meeting with the Council to discuss the performance of the University and such meeting shall discuss among other matters, reports on student enrollment and progression, staffing, finances, academic programmes and quality assurance.
4. Vice-Chancellor of a Public University
- (1) The Vice-Chancellor shall be a person appropriately qualified as provided for in the Act, these Regulations, the Charter, the Universities Standards and Guidelines, other relevant laws, University Statutes and Policies.
 - (2) The Vice-Chancellor shall hold office for a period of five years and may, subject to satisfactory performance, be eligible for re-appointment for a further term of five years.
 - (3) At least six months to the expiry of the five-year contract, the Vice-Chancellor shall, if interested in a second term, submit an application to the Chairperson of the Council to consider renewing his or her contract.
 - (4) The Council shall within two months of receipt of the application, evaluate the performance of the Vice-Chancellor and, if satisfied, recommend to the appointing authority his or her re-appointment for a final term of five years.
 - (5) The procedure of appointment and re-appointment of a Vice-Chancellor of a public University shall be as provided for in the Act.
 - (6) Notwithstanding the provisions of the Act, the Vice Chancellor shall—
 - (a) be the accounting officer of the University and shall be responsible to the university Council for the maintenance and promotion of the objectives of the University;
 - (b) be the Secretary and ex-officio member to the University Council.
 - (c) be the Chairperson of the Senate;
 - (d) be the Chairperson of the University Management Board and any other Committee as specified in the Charter and Statutes; and
 - (e) have such powers and duties as may be conferred by the University Council in accordance with the University Charter and Statutes.
 - (7) The Vice-Chancellor may, from time to time, assign or delegate any of his/her duties to a Committee or a member of the University Staff for the proper functioning of the University and may withdraw any such assignment or delegation as may be deemed necessary. The Vice-Chancellor shall retain overall responsibility over the decisions made under the delegated powers.
 - (8) In the case where a Vice-Chancellor is unable to discharge his duties for whatever reason, the University Council shall appoint, in acting capacity one of the Deputy Vice-Chancellors to perform the duties of the Vice-Chancellor for a period not exceeding six months.
 - (9) The Council in consultation with the Cabinet Secretary may terminate the appointment of a Vice-Chancellor on the basis of—

-
- (a) serious violation of the Constitution or any other written law as pronounced by a competent Court of law;
 - (b) violation of the principles of public service;
 - (c) violation of National Values including the tenets of leadership and integrity;
 - (d) gross misconduct;
 - (e) physical or mental incapacity as declared by competent medical practitioners to perform the functions of the office;
 - (f) incompetence;
 - (g) unsatisfactory performance; or
 - (h) bankruptcy, as adjudged by a court of competent jurisdiction.
- (10) The termination in subparagraph (9) shall—
- (a) be subject to the Vice-Chancellor being accorded a fair hearing as provided for in section 63 of the Act; and
 - (b) take into consideration the relevant laws and University Statutes and Policies.
- (11) Where the position of Vice Chancellor falls vacant, the Council shall appoint an acting Vice Chancellor from among the Deputy Vice Chancellors or any other suitably qualified person for a period not exceeding six (6) months or until a substantive Vice Chancellor is appointed whichever comes earlier.
- (12) The provisions of this section shall apply to the Principal of a Constituent College.
5. Vice Chancellor of a Private University
- (1) A private University shall define the procedure of appointment and the tenure of its Vice-Chancellor in its Charter and Statutes and in the case of an institution with Letter of Interim Authority, in its Proposal.
 - (2) The procedure defined in (1) shall take into consideration provisions in the Universities Act, these Regulations and the Universities Standards and Guidelines.
 - (3) The duties of a Vice-Chancellor shall be spelt out in the Charter and statutes, and in the case of an institution with a Letter of Interim Authority, its Proposal, and shall be in line with the provisions of the Universities Act.
 - (4) Notwithstanding the provisions of (3), the Vice Chancellor shall:
 - (a) be the Accounting Officer of the University and shall be responsible to the University Council for the maintenance and promotion of the objectives of the University;
 - (b) be the Secretary and ex-officio Member to the University Council;
 - (c) be the Chairperson of the Senate; Chairperson of the University Management Board and any other Committee as specified in the Charter and Statutes; and
 - (d) have such powers and duties as may be conferred by the University Council in accordance with the University Charter and Statutes.

6. Council of a Private University

- (1) A private University shall outline the procedure for appointment of Council in its Charter and in the case of Institutions with Letter of Interim Authority, in their Proposals.
- (2) A private university shall provide for the qualifications and procedures of appointment of its Chairperson and members of Council in its Charter and Statutes, and in the case of an institution with Letter of Interim Authority, in its Proposal.
- (3) A private University shall outline the procedure for appointment of Council in its Charter and in the case of Institutions with Letter of Interim Authority, in their Proposals.
- (4) The functions of a Council of a private university shall be as prescribed in the Act. In addition, a University shall—
 - (a) clearly stipulate the composition and functions of the Council in its Charter and Statutes, and in the case of an institution with Letter of Interim Authority, in its Proposal;
 - (b) determine and outline the staff required for the optimum performance of the University in its Charter, Proposal or Legal Notice in the case of a chartered University, institutions with Letter of Interim Authority or Constituent College respectively, in compliance with the relevant statutory provisions, Universities Regulations, Universities Standards and Guidelines, Charter, Statutes, Proposal and the Legal Notice;
 - (c) approve a Human Resource Policy to govern the terms and conditions of the staff in line with the Constitution, the relevant statutory provisions, Universities Regulations, Universities Standards and Guidelines, Charter, Statutes, Proposal and the Legal Notice;
 - (d) institute mechanisms, for appraisal, reward and sanction of staff which shall be documented;
 - (e) institute mechanisms of ensuring that the contractual obligations to staff and statutory requirements are met in a timely manner;
 - (f) approve statutes, plans, policies, budgets and any other relevant documents submitted by the University Management Board;
 - (g) consider and approve proposals of the Senate for associations, collaborations, partnerships, networks and linkages with other bodies or organizations in furtherance of the purpose for which the University was established, where the same bear financial implication;
 - (h) receive regular progress reports on academic and administrative functions of the University for purposes of monitoring the performance of the University; and
 - (i) regularly brief the Sponsor/Board of Trustees on the performance of the University in the promotion of the objectives for which the University was established.

7. Council of a Public University

- (1) A Council shall employ staff and in so doing the Council shall-

- (a) determine and outline the staff required for the optimum performance of the University in its Charter, for chartered universities or Legal Order in the case of a Constituent College;
 - (b) approve a Human Resource Policy to govern the terms and conditions of the staff in line with the Constitution, the relevant statutory provisions, Universities Regulations, Universities Standards and Guidelines, Charter, Statutes and the Legal Notice;
 - (c) institute mechanisms, for appraisal, reward and sanction of staff which shall be documented; and
 - (d) institute mechanisms of ensuring that the contractual obligations to staff and statutory requirements are met in a timely manner.
- (2) A public university shall outline in its Charter and Statutes, and in the case of a Constituent College, in its Legal Notice, the process of determining the tenure of its Council members during the first meeting of an initially appointed full Council, in line with the provisions of the Universities Act.
- (3) A Chairperson of the Council shall communicate to the Cabinet Secretary the members who will serve for a term of three years, and a term of four years.
- (4) The Cabinet Secretary, in exercising his powers of appointment, may terminate the appointment of a member or members of Council or dissolve an entire Council for—
- (a) serious violation of the Constitution or any other written law as pronounced by a competent Court of law;
 - (b) violation of the principles of public Service;
 - (c) violation of national values including the tenets of leadership and integrity;
 - (d) gross misconduct;
 - (e) physical or mental incapacity as declared by competent medical practitioners to perform the functions of the office;
 - (f) incompetence;
 - (g) unsatisfactory performance; or
 - (h) bankruptcy, as adjudged by a court of competent jurisdiction.
- (5) In the case of appointment of Council members under section 36(1) (d) of the Act, the Cabinet Secretary shall constitute a Selection Panel, chaired by a person with at least fifteen years of experience in university management to advertise, shortlist, interview and make recommendations to the Cabinet Secretary on qualified applicants for consideration as Council members in line with section 36(3) of the Act.
- (6) The Cabinet Secretary, upon receipt of the recommendations of the Selection Panel, shall consider, appoint and cause to be published in the Kenya *Gazette* the members of Council for a University.
- (7) A University shall outline the standing committees of the various governing organs and describe their composition, functions and responsibilities in the Charter, Legal Notice, for institutions with Charter, Statutes and Legal Order for Constituent Colleges.

- (8) The Council shall rationalize the positions of Deputy Vice Chancellor and other managers of the University which shall be articulated in the statutes.
 - (9) In the case where the position of Deputy Vice-Chancellor in charge of Finance and Administration or the equivalent has been established, the holders of the office shall have demonstrated training and competence in finance and administration.
8. University Management Board
- (1) The management board of a university shall –
 - (a) assist the Vice-Chancellor in the day to day management of the University;
 - (b) be responsible for implementation of the policies of the university; and
 - (c) undertake such other functions as shall be set out in the Charter.
 - (2) The composition of the Management Board shall be stipulated in the Charter, Proposal, or Legal Notice in the case of institutions with Letter of Interim Authority or Constituent College respectively and the membership shall include the Vice Chancellor, Deputy Vice Chancellor and Managers of administrative functions of the University.
9. Senate
- (1) The Senate of a university shall be in charge of all academic matters of a university.
 - (2) The Senate shall formulate and implement academic programmes of the University.
 - (3) Every University shall articulate the composition of the Senate in its Charter, or in the case of a University with a Letter of Interim Authority, in its proposal and in the Legal Order for a Constituent College.
 - (4) The composition of Senate shall include but not limited to the Vice Chancellor, Deputy Vice Chancellor(s), Academic Deans', Chairpersons of Academic Departments, and Professors as well as representatives of the Student Council.
 - (5) The members of the Senate whose membership is by virtue of office, shall have been appointed on merit to those offices through an open and transparent process that shall be stipulated in the University Charter and Statutes.
 - (6) Decisions of the Senate on any academic matter shall be in accordance with the provisions of the Universities Act, Universities Regulations and Universities Standards and Guidelines and approved plans and policies of the University.
 - (7) The Senate shall on a regular basis carry out tracer studies of their graduates for purposes of appraising the programmes of the University.
 - (8) The Senate shall put in place an integrated system for monitoring the progress of each enrolled student up to graduation.
 - (9) The Senate shall ensure and confirm the availability of academic resources before an academic programme is launched and during implementation in any campus.
 - (10) Notwithstanding the foregoing, the Senate of a university shall undertake the functions assigned to it in the Charter, Proposal and Legal Notice respectively.

10. Staff

The staff of a university shall be as provided in its Charter for chartered universities, Proposal in institutions with Letter of Interim Authority or Legal Order in the case of Constituent College and their respective Statutes.

11. Student's Association

Every University shall provide for the students' association in accordance with the Act.

12. Alumni Association

- (1) A University shall establish an Alumni Association, which may consist of graduates of the university and such other persons as may be declared to be members in its Charter and Proposal in the case of institutions with Letter of Interim Authority.
- (2) Every University shall put in place mechanisms to capture contact details of its graduating students who will form the alumni database.
- (3) An Alumni Association shall act as an interactive forum for the members and perform such other function as may be specified in the Act, Charter and Statutes.

Made on the 12th April, 2023.

EZEKIEL MACHOGU,
Cabinet Secretary for Education.

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THE UNIVERSITIES ACT

NO. 42 OF 2012

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NO. 42 OF 2012

UNIVERSITIES ACT

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SCHEDULES

NO. 42 OF 2012

UNIVERSITIES ACT

[Date of assent: 13th December, 2012.]

[Date of commencement: 13th December, 2012.]

An Act of Parliament to provide for the development of university education; the establishment, accreditation and governance of universities; the establishment of the Commission for University Education, the Universities Funding Board and the Kenya University and Colleges Central Placement Service Board; the repeal of certain laws, and for connected purposes

[Act No. 42 of 2012, Legal Notice 140 of 2012, Act No. 18 of 2014, Act No. 25 of 2015, Act No. 48 of 2016, Act No. 18 of 2018, Act No. 24 of 2019, Act No. 20 of 2020.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Universities Act, 2012.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"academic programme" means the design of learning content which includes the intention, the structure of the content, the delivery mode, academic resources and assessment modes;

"academic staff" means any person appointed to teach, train or to do research at a university and any other employee designated as such by the university council;

"accreditation" means the procedure by which the Commission recognises an institution as a University and as having fulfilled the prescribed criteria for mounting its academic programmes;

"alumni" means a member of the convocation of a university;

"Board" means the Universities Funding Board established under section 54;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters related to university education;

"Charter" means the Charter granted to a university under sections 19 24 or 25

"Commission" means the Commission for University Education established under section 4;

"constituent college" means a constituent college of a university established under this Act;

"differentiated unit cost" means the annual per student cost of mounting a particular degree programme;

"discipline differentiated remuneration" means academic staff remuneration based on programme discipline clusters;

"distance learning" means the mode of delivering education through use of print, audio-visual, electronic or other technical media;

"foreign university" means a university legally established in a country outside Kenya, which intends to offer university education in Kenya;

"foreign university campus" means an extension of a foreign university, set up by the university pursuant to its statutes and established in accordance with section 28 of this Act;

"Fund" means the Universities Fund established under section 53;

"institution" means a public or private institution or facility used or to be used wholly or partly, for the conduct of university education;

"instrument of accreditation" means the Charter or Letter of Interim Authority establishing a university issued under this Act;

"Open University" means the Open University established under section 24;

"Placement Board" means the Placement Board established under section 55(3);

"private university" means a university which is not established or maintained out of public funds;

"programme accreditation" means the process by which the Commission formally recognizes an academic programme of a University, including a foreign university;

"public university" means a university established and maintained out of public funds;

"quality assurance" means the employment by a university of various measures and mechanisms developed by the Commission to assess, maintain and enhance standards of programmes offered by a university;

"Senate" means the senate of a university or any other equivalent body;

"sponsor" means any person including the government proposing the establishment of a university and committed to its development, implementation, construction, maintenance, management and financing;

"stakeholder" means a person or group of persons involved in an education, training and research institution and with vested interests for the benefit of such an institution;

"statutes" means the statutes of a university made by a university council;

"student" means any person registered in a university or an institution offering university education;

"student with special needs" means a student with motor, hearing or visual or other impairment which requires adaptive support to access education;

"technical university" means a university, established in accordance with section 25 of this Act;

"Trustees" means the Board of Trustees of the Fund;

"**TVET Funding Board**" and "TVETA" shall have the meanings assigned to them under the Technical and Vocational Education and Training Act, (No. 29 of 2013);

"**university**" means a university established in accordance with section 13 of this Act;

"**university campus**" means an extension of a university set up by the university pursuant to its statutes and established in accordance with section 20 of this Act;

"**University Council**" means the governing body of a University;

"**visitation**" means the visitation of a university directed by the Chancellor under section 38 3)(b).

(2) Notwithstanding subsection (1), until after the first general elections under the Constitution, the expressions "**Cabinet Secretary**" and "**Principal Secretary**" shall be construed to mean "**Minister**" and "**Permanent Secretary**" respectively.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 2, Act No. 18 of 2018, Sch.]

3. Objectives of university education

(1) The objectives of university education shall include—

- (a) advancement of knowledge through teaching, scholarly research and scientific investigation;
- (b) promotion of learning in the student body and society generally;
- (c) promotion of cultural and social life of society;
- (d) support and contribution to the realization of national economic and social development;
- (e) promotion of the highest standards in, and quality of, teaching and research;
- (f) education, training and retraining higher level professional, technical and management personnel;
- (g) dissemination of the outcomes of the research conducted by the university to the general community;
- (h) facilitation of life-long learning through provision of adult and continuing education;
- (i) fostering of a capacity for independent critical thinking among its students;
- (j) promotion of gender balance and equality of opportunity among students and employees; and
- (k) promotion of equalization for persons with disabilities, minorities and other marginalized groups.

(2) In the discharge of its functions and the exercise of its powers under this Act, a university shall be guided by the national values and principles of governance set out under Article 10 of the Constitution, and shall in that regard—

- (a) promote quality and relevance of its programmes;
- (b) enhance equity and accessibility of its services;
- (c) promote inclusive, efficient, effective and transparent governance systems and practices and maintenance of public trust;

- (d) ensure sustainability and adoption of best practices in management and institutionalization of systems of checks and balances;
- (e) promote private-public partnership in university education and development; and
- (f) institutionalize non-discriminatory practices.

PART II – THE COMMISSION FOR UNIVERSITY EDUCATION

4. Establishment of the Commission

(1) There is established a Commission to be known as the Commission for University Education.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and capable, in its corporate name, of—

- (a) suing and being sued;
- (b) taking, purchasing, or otherwise acquiring, holding, charging and disposing of movable and immovable property; and
- (c) doing or performing all such other things or acts necessary for the proper performance of its functions under this Act as may lawfully be done or performed by a body corporate.

(3) The Commission for University Education is the successor to the Commission for Higher Education existing immediately before the commencement of this Act, and upon such commencement any reference to the Commission for Higher Education in any document or matter shall for all purposes be construed to be a reference to the Commission for University Education, and all rights, assets, or obligations contained in any contract for goods or services or privilege held by or on behalf of the Commission for Higher Education shall automatically and fully be transferred to the Commission for University Education.

5. Functions of the Commission

(1) The functions of the Commission shall be to—

- (a) promote the objectives of university education;
- (b) advise the Cabinet Secretary on policy relating to university education;
- (c) promote, advance, publicise and set standards relevant in the quality of university education, including the promotion and support of internationally recognised standards;
- (d) monitor and evaluate the state of university education systems in relation to the national development goals;
- (e) licence any student recruitment agencies operating in Kenya and any activities by foreign institutions;
- (f) develop policy for criteria and requirements for admission to universities;
- (g) recognize and equate degrees, diplomas and certificates conferred or awarded by foreign universities and institutions in accordance with the standards and guidelines set by the Commission from time to time;
- (h) undertake or cause to be undertaken, regular inspections, monitoring and evaluation of universities to ensure compliance with the provisions of this Act or any regulations made under section 70;
- (i) collect, disseminate and maintain data on university education;

- (j) accredit universities in Kenya;
- (k) regulate university education in Kenya;
- (l) on regular basis, inspect universities in Kenya;
- (m) promote quality research and innovation; and
- (n) *deleted by Act No. 18 of 2014, Sch.*

(2) The Commission may where it deems appropriate, delegate any of its functions in this section to any suitably qualified person or body.

(2A) The Commission shall have all the powers as may be necessary for the proper discharge of its functions under this Act.

(2B) (1) The Commission shall, in approving and inspecting university academic programmes—

- (a) analyse and consider the following factors—
 - (i) learning content of a programme;
 - (ii) purpose and objectives of a programme;
 - (iii) structure of a programme;
 - (iv) delivery mode of a programme;
 - (v) availability of academic resources to implement a programme;
 - (vi) mode of assessment of the programme;
 - (vii) learning environment of a university;
 - (viii) learning facilities of a university; and
 - (ix) extra-curricular activities offered by a university;
- (b) ensure openness, maintain objectivity and consistency in arriving at its decision.
- (2) Despite subsection (1), the Commission may consider any other factor as it may deem fit and may rank each factor assessed to indicate the level of compliance.
- (3) For the avoidance of doubt, the Commission shall be the only body with the power to perform the functions set out in this section.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 3.]

5A. Conflicts with other Acts in approval of programmes

(1) If there is a conflict between the provisions of this Act and the provisions of any other Act in matters relating approval or accreditation of academic programmes offered by universities, the provisions of this Act shall prevail.

(2) Despite the provisions of any other law, the recognition, licensing, student indexing, approval or accreditation of any academic programme including postgraduate degrees, diplomas including postgraduate diplomas and other academic certificates offered at a university shall be the exclusive mandate of the Commission to be exercised in accordance with this section at the exclusion of any other person or body.

(3) The Commission may, before approving any academic programme consult with any relevant body established by written law to regulate the profession to which the academic programme relates where such law empowers the professional body to approve or accredit courses offered at any university or colleges.

(4) Pursuant to section 5(2), the Commission may engage—

- (a) professional bodies and associations to carry out inspection of universities on its behalf;
- (b) the Auditor-General to offer the Commission professional opinion on management and financial positions of a particular university.

(5) A person who without the authority of the Commission under this Act purports to license, accredit, recognise, audit, inspect, index students or collect a fee or a charge from a university or a student commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or imprisonment for a term not exceeding two years or both.

[Act No. 48 of 2016, s. 5.]

6. Constitution of the Commission

(1) The Commission shall consist of—

- (a) a chairperson appointed by the President;
- (b) the Principal Secretary in the Ministry for the time being responsible for university education;
- (c) the Principal Secretary in the Ministry for the time being responsible for national treasury;
- (d) one person appointed by the Cabinet Secretary who is a distinguished academic scholar with at least ten years' experience in management of university education;
- (e) one person nominated by the Federation of Kenya Employers and appointed by the Cabinet Secretary;
- (f) one person nominated by chairpersons Councils of public universities in a forum of chairpersons of the Councils of public universities convened by the Cabinet Secretary for that purpose;
- (g) one person nominated by chairpersons Councils of private universities in a forum of chairpersons of the Councils of private universities convened by the Cabinet Secretary for that purpose; and
- (h) the Commission Secretary who shall be an *ex-officio* member.

(2) Deleted by Act No. 18 of 2018, Sch.

(3) Deleted by Act No. 18 of 2018, Sch.

(4) Deleted by Act No. 18 of 2018, Sch.

(5) Deleted by Act No. 18 of 2018, Sch.

(6) Deleted by Act No. 18 of 2018, Sch.

(7) Deleted by Act No. 18 of 2018, Sch.

(8) Deleted by Act No. 18 of 2018, Sch.

(9) Deleted by Act No. 18 of 2018, Sch.

(10) Deleted by Act No. 18 of 2018, Sch.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 4, Act No. 18 of 2018, Sch.]

7. Qualification for appointment as member of Commission

(1) A person shall be qualified for appointment as a chairperson or member of the Commission if the person—

- (a) in the case of the chairperson, holds a doctorate degree from a university recognized in Kenya and has at least fifteen years' experience in matters relating to management of university education;

- (b) in case of a member of the Commission referred to under section 6(e), (f) and (g) holds a masters degree from a university recognized in Kenya and has at least ten years' experience in matters relating management of university education.

(2) In addition to the qualifications specified under subsection (1), a member of the Commission shall be a person of high moral character and integrity in accordance with Chapter Six of the Constitution and capable of contributing to university education.

(3) The chairperson of the Commission shall be appointed from persons who, in addition to the competencies specified in subsection (1), have ten years' experience in leadership and management of public or private institutions.

(4) Subject to the provisions of this Act, the chairperson and members of the Commission shall hold office for a term not exceeding four years and shall be eligible for reappointment for one further term.

(5) *Deleted by Act No. 48 of 2016, s. 6.*

(6) All appointments under this section shall be by notice in the *Gazette*.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 6.]

8. Vacancy of office

(1) Subject to the provisions of this Act, the office of a member of the Commission shall become vacant if the member—

- (a) resigns by notice in writing addressed to the Cabinet Secretary;
- (aa) is absent from three consecutive meetings of the Commission without the permission of the Chairperson, or, in the case of the Chairperson, the permission of the Cabinet Secretary;
- (b) is unable to perform the functions of office by reason of prolonged physical or mental incapacity;
- (c) is adjudged bankrupt by a court of competent jurisdiction or enters into a composition or scheme of arrangement for the benefit of creditors;
- (d) is guilty of gross misconduct;
- (e) fails to meet the requirements of Chapter Six of the Constitution; or
- (f) is convicted of an offence and sentenced to imprisonment for a period of six months or more.

(2) Where the office of a member of the Commission becomes vacant, the Cabinet Secretary may, subject to the provisions of this Act, appoint another person to fill the vacancy for the remainder of the term of such member.

(3) Notwithstanding the generality of the foregoing, any member of the Commission suspected of having contravened Chapters 6 or 13 of the Constitution shall vacate office to pave way for investigations.

(4) Where a person who has vacated office under subsection (3) is not found culpable of any unlawful act by a competent legal authority, the person shall be reinstated to the position of a Commissioner.

(5) The First Schedule shall apply with respect to the conduct of the business and affairs of the Commission.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 7.]

9. Commission Secretary

(1) There shall be a Secretary of the Commission who shall be appointed by the Cabinet Secretary on the recommendation of the Commission following a competitive recruitment process and who shall serve for a period of five years, which term may be renewable once.

(2) The Secretary shall be the chief executive officer of the Commission and shall be responsible for the day to day management of the affairs of the Commission.

10. Deputy Secretary

(1) The Commission shall appoint one or more Deputy Commission Secretaries who shall, under the general authority of the Commission Secretary, exercise such powers and perform such duties as may be assigned by the Secretary.

(2) A Deputy Commission Secretary shall hold office on such terms and conditions as may be specified in the instrument of appointment.

11. Qualification for appointment as Commission Secretary

(1) A person shall be qualified for appointment as a Commission Secretary if the person—

- (a) holds a masters degree from a university recognized in Kenya; and
- (b) has at least ten years' experience in the management of a university.

(2) In addition to the qualifications specified under subsection (1) a person shall meet the requirements of Chapter Six of the Constitution.

[Act No. 48 of 2016, s. 8.]

12. Other members of staff of the Commission

(1) The Commission may employ such other officers and staff as it may deem necessary for the performance of its functions under this Act and any person employed under this section shall be deemed to be a public officer within the meaning of the Constitution.

(2) All appointments under this section shall take into account gender equity, ethnic and regional balance in accordance with the Constitution.

[Act No. 18 of 2014, Sch.]

12A. Protection from personal liability

(1) No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent or any person acting under the directions personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Commission of the liability to pay lawful compensation or damages to any person for injury to the person or property.

[Act No. 48 of 2016, s. 9.]

PART III – ESTABLISHMENT AND ACCREDITATION OF UNIVERSITIES**13. Establishment of a university**

(1) Every university in Kenya shall be established by a Charter or a Letter of Interim Authority in accordance with this Act.

(2) A person wishing to establish a University in Kenya shall apply in writing to the Commission in the prescribed manner for accreditation and the grant of a Charter.

(3) An application under subsection (2) shall be accompanied by a draft of the Charter of the proposed university, which shall provide for the following with respect to the university—

- (a) governance structures and systems;
- (b) members and staff;
- (c) financial management systems;
- (d) development of the Statutes;
- (e) use of the common seal and custody of instruments of authority;
- (f) process of voluntary winding up;
- (g) the procedure for vetting of applicants and nominees for the office of Chancellor;
- (h) the academic programmes offered at the university;
- (ha) the financial ownership structure of the university if the university is a private university;
- (i) the infrastructure in place or proposed infrastructure and the locations thereof, including that of Constituent Colleges and which shall comply with infrastructural standards established by the Commission; and
- (j) any other matter required by the Commission.

(3A) Any information containing personal data presented to the Commission shall be handled in accordance with data protection principles set out in the Data Protection Act.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 10, Act No. 24 of 2019, 2nd Sch.]

14. Letter of Interim Authority

(1) The Commission shall consider every application submitted to it under section 13 and inspect and assess the resources of the applicant, and where the Commission is satisfied that the applicant meets the requirements of this Act, shall recommend to the Cabinet Secretary the issuance of a Letter of Interim Authority to the applicant.

(2) The Cabinet Secretary may grant a Letter of Interim Authority to an institution under subsection (1) if satisfied that such institution shall, once established, contribute to the development of university education in Kenya.

(3) Notwithstanding the generality of the foregoing, the Commission may, in consultation with stakeholders, advise the Cabinet Secretary on the suitability of an institution intended to be established as a public university.

15. Effects of letter of Interim Authority

(1) An institution granted an Letter of Interim Authority under section 14 shall be a body corporate with perpetual succession and a common seal and capable, in its corporate name, of—

- (a) suing and being sued;
- (b) acquiring, holding and disposing of moveable and immovable property; and

- (c) doing all such other things or acts as may lawfully be done by a body corporate.

(2) An institution to which a Letter of Interim Authority is granted shall have power to—

- (a) set up a governing body for the university;
- (b) continue to develop the physical facilities;
- (c) continue to assemble academic resources;
- (d) with the prior approval of the Commission advertise and admit students to the academic programmes of the institution;
- (e) establish and maintain internal quality assurance mechanism to assure standards, quality and relevance in the institution in accordance with the provisions of this Act;
- (ee) exercise any of the functions specified in section 20(1)(e); and
- (f) perform such other acts as the Commission may require.

(3) Nothing in this section shall be construed to preclude a university from developing infrastructure in anticipation the grant of a Charter under this Act.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 11, Act No. 18 of 2018, Sch.]

16. Duration of letter of Interim Authority

(1) A Letter of Interim Authority granted under section 15 shall lapse—

- (a) after the expiry of a period of four years from the date of issue, subject to an extension for a period of four years which may be granted by the Cabinet Secretary, on the recommendation of the Commission; or
- (b) upon revocation under section 17; or
- (c) upon the grant of a Charter.

(2) An institution whose Letter of Interim Authority lapses under subsection (1) (a) or (b) shall be wound up in accordance with this Act.

17. Revocation of a Letter of Interim Authority

The Cabinet Secretary may, on the recommendation of the Commission or on application by the respective institution, revoke a Letter of Interim Authority in accordance with regulations on the winding up of universities and shall issue a notice in the *Gazette* to that effect.

18. Accreditation report for purposes of grant of Charter

(1) The Commission shall, at least six months before the expiry of the Letter of Interim Authority, prepare an accreditation report indicating whether or not the application for the establishment of a university has met all the conditions required under this Act.

(2) The Commission shall submit the accreditation report referred to under subsection (1) and its recommendations thereon to the Cabinet Secretary.

19. Grant or refusal to grant a Charter

(1) The Cabinet Secretary shall consider the report and the recommendations submitted under section 18 and may—

- (a) if satisfied that the application meets the requirements for the establishment of a university, recommend to the President the grant of a Charter, either in the form of the draft Charter submitted with the

application or in such other form as the Commission may consider appropriate;

- (b) extend the Letter of Interim Authority for a further and final period of four years; or
- (c) if satisfied that the proposed university does not meet the requirements for establishment of a university, reject the application.

(2) Where the Cabinet Secretary rejects an application under paragraph (1)

(c) —

- (a) the Cabinet Secretary shall furnish the applicant with the reasons for the rejection of the application;
- (b) the Letter of Interim Authority issued under this Act shall, be revoked within one year:

Provided that the applicant may submit a fresh application in accordance with this Act; and

- (c) the Cabinet Secretary may, in consultation with the Commission appoint such person or persons to administer and manage the university for the better protection of the interests of the students and staff of the university as provided for in the regulations.

(3) Subsection (2) shall apply *mutatis mutandis* where a Letter of Interim Authority is revoked under section 17.

20. Effect of a Charter

(1) A university granted a Charter in accordance with section 19—

- (a) shall be a body corporate, and as such shall continue the activities of the university as undertaken under the Letter of Interim Authority, including the employment of staff, except where activity is expressly altered under the Charter;
- (b) shall mobilize academic resources;
- (c) may develop its new academic programmes for approval by the Commission in accordance with this Act;
- (d) may establish campuses and colleges which must conform to standards established by regulations made under this Act; and
- (e) may award—
 - (i) degrees, including postgraduate degree and honorary degrees;
 - (ii) diplomas, including postgraduate diplomas; and
 - (iii) other academic certificates.

(2) Notwithstanding the generality of subsection (1), colleges and campuses of universities shall not share premises with incompatible businesses.

(2A) Despite the provisions of Section (1)(d), a public university shall not establish a campus or a college in a foreign country without the approval of the Cabinet Secretary in consultation with the Cabinet Secretary for the time being responsible for matters relating to finance.

(3) The Cabinet Secretary may, in consultation with the Commission, by order published in the *Gazette*, establish or declare an institution of learning or higher education or other training establishment to be a constituent college of a university.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 12.]

21. Publication of Charter

The Cabinet Secretary shall, by notice in the *Gazette*, publish the Charter granted under section 19.

22. Variation, revocation of Charter

(1) The President may, on the recommendation of the Cabinet Secretary revoke a Charter if in the opinion of the President the revocation is in the best interest of university education in Kenya.

(2) The recommendation referred to under subsection (1) shall be made with the prior concurrence of the Commission which shall satisfy itself that the revocation is in the best interest of university education in Kenya.

(3) A recommendation under subsection (1) shall only be made after the University has been afforded the opportunity to be heard and the Commission has, in accordance with the regulations, inspected the university concerned, and is satisfied that the university is unable to contribute to the objectives of university education set out in this Act.

(4) If a Charter is revoked under subsection (1) the Cabinet Secretary shall forthwith cause a notice of revocation to be published in the *Gazette*, and the university concerned shall cease to be a university at the expiry of one year from the date of the notice.

(5) Notwithstanding subsection (4) the revocation of a Charter shall not affect the validity of any academic award made by the University before the revocation.

(6) Upon the revocation of a Charter, the Cabinet Secretary may, in consultation with the Commission in the case of a public university, or with the Commission and the sponsor in the case of a private university, appoint such person or persons as the Cabinet Secretary may deem appropriate to administer and manage the university for the better protection of the interests of the students and staff of the University.

(7) The Cabinet Secretary may, in consultation with the Commission, make regulations for the better carrying out of the functions under this section.

[Act No. 25 of 2015, Sch.]

22A. Variation of Charter

(1) The Cabinet Secretary may, upon an initiation made under subsection (3), vary a Charter if in the opinion of the Cabinet Secretary that the variation is in the best interest of university education in Kenya.

(2) The recommendation referred to under subsection (1) shall be made based on need to —

- (a) align the particular Charter to the Constitution or any written law;
- (b) align the university to the training and research priority of the national government that would develop expertise in a specified academic field, including instilling of skills with bias in employment creation;
- (c) in the case of a private university, to reflect changes in sponsorship of the university;
- (d) align the university to the dynamics in research, technology and prevailing academic requirements recommended by the body which by law represents employers; or
- (e) align the charter to the best interests of university education in Kenya.

(3) A variation under subsection (1) may be initiated—

- (a) by the Commission upon request by a university, in the case of a public university; or
- (b) by the sponsor in the case of a private university; and may include the introduction of such mechanisms as shall enable the university concerned to better carry out its functions.

(4) A decision for the variation by the Cabinet Secretary shall be made without unreasonable delay, but in any case—

- (a) within three months from the date a recommendation for variation is made by the Commission, if the process is initiated by the Commission; or
- (b) within six months from the date a formal request for variation is made by a university, if the process is initiated by a university.

(5) If a Charter is varied under subsection (1), the Cabinet Secretary shall forthwith cause a notice of variation to be published in the *Gazette*, and the variation shall come into effect on such date as may be specified in the notice.

(6) Notwithstanding subsection (5), the variation of the Charter shall not affect the validity of any academic award made by the University before variation.

(7) For the purpose of this section, "vary" includes a review or amendment.

[Act No. 25 of 2015, Sch.]

23. Statutes

(1) Subject to this Act and to the Charter a University Council may, and where required by this Act to do so shall, make such statutes and regulations as it considers appropriate to regulate the affairs of the university.

(2) A university Council shall, as soon as practicable and in any event not later than three months after the making of a statute or regulation under this section, submit it to the Cabinet Secretary for publication in the *Gazette*.

[Act No. 48 of 2016, s. 13.]

24. Establishment of specialized degree awarding institutions

(1) The President, on the recommendation of the Commission through Cabinet Secretary, and with the approval of Parliament may by award of Charter, establish

- (a) specialized degree-awarding or research institutions whose mandate shall be of strategic national importance; and
- (b) a national Open University as a specialized university under this section, to offer university programmes through distance and e-learning mode.

(2) The institutions established under this section shall be prioritized by the Commission with respect to accreditation and the development of the governing instruments.

(3) Despite subsection (1), the President may, on the recommendation of the Commission through the Cabinet Secretary, and on the advice of the National Security Council, establish a specialized degree awarding institution specializing in national security issues.

(4) The provisions of Part V of this Act shall apply to an institution established under this section with such modifications as may, with the approval of the Cabinet Secretary and the Commission, be specified in the respective Charter.

(5) A Charter granted to an institution established under this section shall stipulate the conditions under which the institution shall operate, and a clearly defined mandate with regard to specified academic programmes.

[Act No. 20 of 2020, Sch.]

25. Declaration of Technical Universities

(1) The President may, on the recommendation of the Cabinet Secretary, declare an institution to be a technical university subject to such conditions, standards and guidelines as may be specified by the Commission.

(2) Where a declaration under this section is made with respect to a public institution, it shall only apply where such institution is a National Polytechnic within the meaning of the Technical and Vocational Education and Training Act, 2013.

[Act No. 18 of 2014, Sch.]

26. Universities in Counties

The Commission shall ensure the establishment of public universities in each of the Counties, giving priority to Counties that do not have universities immediately after following the coming into force of this Act.

27. Unauthorized use of a University name

(1) A person who, except with the written consent of a university Council—

- (a) uses the name of a university in furtherance of, or in connection with, an advertisement for any trade, business, calling or profession; or
- (b) issues a certificate purporting it to be from that university,

commits an offence and is liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding three years, or to both.

(2) Notwithstanding any other written law, no public officer performing functions relating to the registration of companies, business names or trademarks shall accept for registration a name which is identical to, or so similar as to confuse the public with the name of a University, unless the consent of the respective university council has been obtained.

(3) This section shall apply, *mutatis mutandis*, to the Open University established under section 24(1)(b).

28. Accreditation of foreign universities

(1) A university established outside Kenya which intends to offer university education in Kenya, shall apply to the Commission for accreditation in accordance with the provisions of this Act.

(2) A foreign university may, subject to the provisions of this Act, enter into an arrangement with an institution in Kenya for purposes of offering its programmes or joint programmes of instruction in Kenya, with the prior approval of the Commission.

(3) Any foreign university approved under subsection (2) must first submit proof of accreditation from its country of origin to undertake university education in Kenya.

(4) The Commission shall, at the beginning of each year and thereafter each quarter of the year, cause to be published in at least three newspapers of national

circulation, the list of universities accredited to undertake university education in Kenya.

(5) Any person who purports to offer a degree through a university that is not accredited commits an offence and shall be liable upon conviction, to a fine of not less than ten million shillings, or to imprisonment for a term of not less than three years, or to both.

29. Academic freedom

(1) A University, in performing its functions shall—

- (a) have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs;
- (b) have power to regulate its affairs in accordance with its independent ethos and traditions and in doing so it shall have regard to—
 - (i) the promotion and preservation of equality of opportunity and access;
 - (ii) effective and efficient use of resources; and
 - (iii) its obligations as to public accountability.

(2) A member of the academic staff of a university shall have the freedom, within the law, in the member's teaching, research and any other activities either in or outside the university, to question and test received wisdom, to put forward new ideas and to state opinions, and shall not be disadvantaged, or subject to less favourable treatment by the university, for the exercise of that freedom.

PART IV – FINANCIAL PROVISIONS RELATING TO THE COMMISSION

30. Funds of the Commission

The funds of the Commission shall consist of—

- (a) monies allocated by Parliament for the purposes of the Commission;
- (b) fees and charges for services rendered by the Commission;
- (c) such monies as may be lawfully earned from income generating activities; and
- (d) monies granted, donated or lent to the Commission from any other source, with the approval of the Cabinet Secretary and the Cabinet Secretary responsible for finance.

31. Financial year

The financial year of the Commission shall be the period of twelve months ending on the thirtieth June of each year.

32. Annual estimates

(1) At least three months before the commencement of each financial year, the Commission shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.

(2) The annual estimates shall make provision for all the estimated expenditure of the Commission for the financial year concerned and in particular, shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Commission;

- (b) the payment of pensions, gratuities and other charges, and in respect of benefits which are payable out of the funds of the Commission;
- (c) the maintenance of the assets of the Commission;
- (d) the funding of operations, training, research and development of activities of the Commission; and
- (e) the creation of such reserves to meet future or contingent liabilities in respect of benefits, insurance or replacement of buildings or installations, equipment and in respect of such other matters as the Commission, may think fit.

(3) The annual estimates shall be approved by the Commission, before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the Cabinet Secretary has given approval, the Commission shall not increase any sum provided in the estimates without the consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Commission except in accordance with funds voted or appropriated by Parliament.

33. Accounts and audit

(1) The Commission shall cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Commission.

(2) Within a period of three months after the end of each financial year, the Commission shall submit to the Auditor-General the accounts of the Commission in respect of that year together with—

- (a) a statement of the income and expenditure of the Commission during that year; and
- (b) a statement of the assets and liabilities of the Commission on the last day of that financial year.

(3) The annual accounts of the Commission shall be prepared, audited and reported upon in accordance with the provisions of the Public Audit Act, 2003 (No. 12 of 2003).

PART V – GOVERNANCE AND MANAGEMENT OF UNIVERSITIES

34. Instruments of governance

Subject to the provisions of this Act, a university shall be governed in accordance with the provisions of its Charter or Letter of Interim Authority granted under this Act and statutes made by its Council.

[Act No. 48 of 2016, s. 14.]

35. Governing organs of a university

(1) In addition to the provisions of its Charter, a university shall establish the following organs of governance or their equivalent—

- (a) a Council, which shall—
 - (i) employ staff;
 - (ii) approve the statutes of the University and cause them to be published in the Kenya Gazette;
 - (iii) approve the policies of the University;
 - (iv) approve the budget;

- (v) in the case of public universities, appoint Vice Chancellor, Deputy Vice Chancellors and Principals and Deputy Principals of Constituent Colleges, in consultation with the Cabinet Secretary, after a competitive process conducted by the Public Service Commission; and
- (vi) undertake other functions set out under this Act and the Charter.
- (b) the Senate, which shall be in charge of all academic matters of the university and shall undertake the functions assigned to it in the Charter of the university.
- (c) the Management Board, which shall—
 - (i) be responsible for implementation of the policies of the university;
 - (ii) assist in the day-to-day management of the university; and
 - (iii) undertake such other functions as shall be set out in the Charter.

(2) Notwithstanding the generality of the provisions of subsection (1), the Council of a private university shall be appointed in accordance with provisions of the Charter, and such a university may, with the approval of the Commission, establish additional governance organs, including a Board of Trustees or its equivalent, as the sponsor may deem appropriate.

(3) A Board of Trustees established pursuant to subsection (2) or the sponsor of a private university shall, in addition to any other functions set out in the charter of the university—

- (a) appoint members of the University Council;
- (b) raise funds for the benefit of the university in accordance with any written law or financing arrangement under section 51A;
- (c) promote the objects of the university; and
- (d) appoint the university Chancellor.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 15, Act No. 18 of 2018, Sch.]

36. Council of a public university

(1) The council of a public university or constituent college of such a university shall consist of nine persons appointed by the Cabinet Secretary as follows—

- (a) chairperson;
- (b) the Principal Secretary in the Ministry for the time being responsible for the university education;
- (c) the Principal Secretary in the Ministry for the time being responsible for Finance;
- (d) five members appointed by the Cabinet Secretary through an open process in such a manner as may be prescribed in guidelines issued by the Cabinet Secretary; and
- (e) the Vice-Chancellor or, in the case of a constituent college, the Principal of such college who shall be an ex officio member of the Council.

(1A) Notwithstanding subsection (1) the Vice-Chancellor of a public university shall be an *ex-officio* member of the councils of the constituent colleges of that university.

(2) The provisions relating to the qualifications of the chairperson and members of the Commission in section 7 shall apply, with necessary modifications, to the chairperson and members appointed under subsection (1)(d).

(3) In making appointments under this section the appointing authority shall have regard to the objectives of the development of university education, ensuring that there are balanced competencies, gender equity, and the inclusion of stakeholders, persons with disabilities, the marginalized and other minority groups.

(4) The provisions of section (8) relating to the vacancy of office of the chairperson and members of the Commission shall apply with necessary modifications to the chairperson and members appointed under subsection (1) (a) and (d).

(5) The members of the Council appointed under section 36(1) shall at their first meeting after appointment determine by lot which two of their number shall vacate office after a period of three and four years respectively to ensure continuity in the activities of the Council.

(6) The provisions of the First Schedule shall apply with necessary modifications, to the conduct of the business and affairs of the Council.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 16]

37. Committees

The governing organs of a university may set up such committees as may be appropriate to perform such functions and discharge such responsibilities as it may determine, provided that the organs shall not delegate their principal mandate to the committees.

38. The Chancellor

(1) Every university shall have a Chancellor, who shall be appointed—

- (a) in the case of a public university, by the President in accordance with the procedure set out in the Second Schedule; and
- (b) in the case of a private university, in accordance with the Charter of that University.

(2) The Chancellor of a public university shall hold office for a term of five years and shall be eligible for re-appointment for one further term.

(3) The Chancellor—

- (a) shall be the titular head of the university and shall, in the name of the University, confer degrees and grant diplomas, certificates and other awards of the University;
- (b) may from time to time, recommend to the Cabinet Secretary in the case of a public university and the Board of Trustees in the case of a private university, a visitation of the University;
- (c) may from time to time give advice to the Council which the Chancellor considers necessary for the betterment of the University;
- (d) shall enjoy such powers and privileges and perform such other functions as may be provided in the Charter.

(4) A person shall only be appointed as a Chancellor where the person is a person of high moral character and integrity in accordance with Chapter Six of the Constitution.

(5) The functions of the Chancellor under subsection (3) may in the absence or incapacity of the Chancellor be performed by the Chairperson of the Council for a period not exceeding three months.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 17.]

39. The Vice-Chancellor

(1) The Vice-Chancellor of a university shall be appointed—

- (a) in the case of a public university, by the Cabinet Secretary on the recommendation of the Council, after a competitive recruitment process conducted by the Council; and
- (b) in the case of a private university, by the respective university Council in accordance with the provisions of the Charter.

(1A) The qualifications for appointment as a Vice-Chancellor of a public university shall be as prescribed in regulations.

(2) The Vice-Chancellor shall be the chief executive of the university and shall—

- (a) be the academic and administrative head of the university;
- (b) have the overall responsibility for the direction, organization, administration and programmes of the university; and
- (c) have such responsibilities and duties as may be provided for in the Charter.

(3) The Vice-Chancellor of a public university shall hold office for a term of five years and shall be eligible for a further term of five years.

(4) The term of the Vice-Chancellor of a private university shall be as provided in the Charter.

(5) The provisions of this section shall apply mutatis mutandis to the Principal of a constituent college.

[Act No. 25 of 2015, Sch.]

40. Staff of the University

The academic and the administrative staff of a university shall be as provided in its Charter.

41. Students' Association

(1) Every university shall have a students' association comprising of all students of the university.

(1A) A students' association shall be governed by a students' council comprising of—

- (a) a Chairperson;
- (b) a Vice Chairperson who shall be of opposite gender with the Chairperson;
- (c) a Treasurer;
- (d) a Secretary-General who shall be the secretary to the Council; and
- (e) three other members to represent special interests of students.

(1B) Every students' council shall be elected in accordance with this Act and its membership shall—

- (a) reflect national diversity; and
- (b) have not more than two-thirds of its members being of the same gender.

(1C) For purposes of conducting the election of the members of the student council referred to in subsection (1A), the students' association shall constitute itself into electoral colleges based on either academic departments, schools or faculties, as may be appropriate.

(1D) The students of each electoral college constituted under subsection (1C) shall elect three representatives—

- (a) from amongst persons who are not candidates under subsection (1A); and
- (b) of whom not more than two-thirds shall be of the same gender.

(1E) The representatives of each electoral college shall elect the members of the student council within thirty days of the election under subsection (1D).

(1F) A member of the student council shall hold office for a term of one year and may be eligible for re-election for one final term.

(1G) A person who has held office as a member of the student council of a University for two terms is disqualified from election as a member of the student council of any other University or constituent college in Kenya.

(1H) Every students' association shall, in consultation with the University, formulate and enact rules to govern the conduct of elections including regulation of campaigns, election financing, offences and penalties.

(1I) An election conducted pursuant to this section shall comply with the general principles of the Kenyan electoral system under Article 81 of the Constitution and the rules governing the election of members of the student council.

(2) The functions of a Students' Council shall be to—

- (a) oversee and plan, in consultation with the Senate, students' activities for the promotion of academic, spiritual, moral, harmonious communal life and social well-being of all students;
- (b) draw to the attention of the appropriate authority, where necessary, special needs form particular students;
- (c) offer suggestions to the Senate or its equivalent on matters affecting the well being of students; and
- (d) undertake such other functions as provided in its governance instrument as approved by the Council.

(3) *Deleted by Act No. 48 of 2016, s. 18.*

[Act No. 48 of 2016, s. 18.]

42. The Alumni Association

(1) A university may establish an Alumni Association, which may consist of graduates of the university and such other persons as may be declared to be members under the Charter.

(2) An Alumni Association shall act as an interactive forum for the members specified under subsection (1) and perform such other functions as may be specified in the Charter.

43. University management

The day-to-day management of the university shall vest in the Vice-Chancellor who shall be assisted by the Management Board of the university in accordance with the provisions of this Act and the Charter.

PART VI – GENERAL FINANCIAL
PROVISIONS RELATING TO UNIVERSITIES

Public Universities

44. Annual estimates for public universities

(1) A public university shall prepare and submit its annual estimates of revenue and expenditure to the Cabinet Secretary for approval in such form and at such times as the Cabinet Secretary shall from time to time prescribe.

(2) A public university may incur expenditure for purposes of the institution in accordance with estimates approved by the Cabinet Secretary, and any approved expenditure under any head of the estimates may not be exceeded without the prior approval of the Council.

(3) A public university may, subject to any other written law, regulations and guidelines, appeal to the general public for subscriptions, donations or bequests for the benefit of the university.

45. Funds of a public university

(1) The funds of a public university shall comprise of—

- (a) such sums as may be provided by Parliament;
- (b) such monies or assets as may accrue to or vest in the public university in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law; and
- (c) all monies from any other source provided for or donated or lent to the public university.

(2) There shall be made to the public university, out of monies provided by Parliament for that purpose, grants towards the expenditure incurred in the exercise of its powers or in performance of its functions under this Act.

46. Unexpended monies

Any unexpended balance of the grant made under section 45 may be carried forward in the account of a public university from one year to the next and be expended as the university may determine.

47. Accounts and audit

(1) A public university shall cause to be kept all proper books of records of accounts of the income, expenditure and the assets of the university.

(2) Within four months from the end of each financial year, a public university shall submit to the auditor general corporations the accounts of the university together with—

- (a) a statement of the income and expenditure of the university during the financial year; and
- (b) a balance sheet of the university on the last day of the year.

(3) The accounts of a public university shall be audited and reported upon in accordance with the provisions of the Public Audit Act, 2003 (No. 12 of 2003).

48. Vesting of property

All immovable property, shares, funds and securities as may from time to time become the property of the public university shall be in the name of the university and shall be dealt with in such manner as the institution may from time to time determine, subject to the conditions upon which any grants are made from public funds for capital or recurrent purposes and the conditions upon which any endowment, bequest or donation is made for any purposes connected with the institution.

49. Investment of funds

(1) A public university may invest any of its funds in securities in which for the time being trustees may by law invest in trust funds, or in any other securities which the Treasury or any other authorized body may, from time to time, approve for that purpose.

(2) A public university may, subject to the approval of the Treasury or any other authorized body, place on deposit with such bank or banks as the public university may determine, any monies not immediately required for the purposes of the university.

50. Financial year

The financial year of a public university shall be the period of twelve months ending on the thirtieth day of June in each year.

Private Universities**51. Financial Management of private universities**

(1) Every private university shall, in accordance with generally accepted accounting practice, principles and procedures—

- (a) keep books and records of income, expenditure, assets and liabilities;
- (b) prepare financial statements within three months of the end of the year, including—
 - (i) a statement of income and expenditure for the previous year; and
 - (ii) balance sheet as at the end of the previous year.

(2) Every private University shall, within a financial year—

- (a) ensure an annual audit of its books, records of account and financial statement by an auditor, who shall conduct the audit in accordance with the generally accepted auditing standards;
- (b) provide to the sponsor or the Board of Trustees of the university, or its equivalent the certified copy of the auditor's report in respect of the financial statements referred to in subsection (1);
- (c) comply with all the financial regulations and meet all financial obligations owed to the State as may be contained in any other written laws;
- (d) account for any funds received from the government;
- (f) on request and for purposes of accreditation or audit, provide to the Commission official confirmation of compliance with financial

obligations which shall be published upon the Commission issuing notice to the university concerned.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 19.]

51A. Financing arrangements

(1) A private university granted a charter may enter into a financing arrangement with any person or institution upon such terms and conditions as may be set out in the arrangement, for the purpose of financing the objectives for which the university is established.

(2) Without prejudice to the generality of subsection (1), the finance arrangement may set out—

- (a) the rights and obligations of each party to the arrangement;
- (b) the sharing of assets or liabilities arising from the arrangement;
- (c) the manner of termination of such arrangement;
- (d) Such other matter as may be necessary under the law under which the arrangement is made.

[Act No. 18 of 2014, Sch.]

52. Investment of funds by private universities

(1) A private university may invest any of its funds as may be approved by the sponsor or the Board of Trustees of the university or its equivalent.

PART VII – THE UNIVERSITIES FUND

53. Establishment of Fund

(1) There shall be established a Fund to be known as the Universities Fund.

(2) The object and purpose of the Fund shall be to provide funds for financing universities.

(3) There shall be paid into the Fund—

- (a) monies provided by Parliament;
- (b) such sums of money as may be received by the Board in the form of donations;
- (c) such sums of money as may be specifically designated for the Fund by the Board out of its own Funds;
- (d) income generated by investments made by the Trustees; and
- (e) endowments, grants and gifts from whatever source designated for the Fund.

(4) There shall be paid out of the Fund—

- (a) any expenditure approved by the Trustees for the funding of the public universities;
- (b) any expenditure approved by the Trustees for conditional grants and loans to private universities; and
- (c) any expenditure authorized by the Trustees to be incurred in connection with the administration of the Fund.

54. Board of Trustees

(1) The Fund shall be managed by a Board of Trustees which shall consist of nine members appointed by the Cabinet Secretary as follows—

-
- (a) a chairperson who has knowledge and experience in matters related to finance, investment and fundraising;
 - (b) the Principal Secretary in the Ministry responsible for finance;
 - (c) the Principal Secretary in the Ministry for University Education;
 - (d) six persons who have proven knowledge and experience in Financial matters of which at least two and not more than three will be of the same gender.

(2) In appointing the members referred to in subsection (1)(d) the Cabinet Secretary shall have regard to—

- (a) the objects of the Fund;
- (b) the need for balanced competencies among the Trustees;
- (c) gender equity; and
- (d) the inclusion of persons with disabilities, minorities and other marginalized groups.

(3) The provisions relating to the appointment of the members of the Commission as set out in section 6 shall apply, *mutatis mutandis*, to the Trustees.

(4) The function of the Trustees shall be to generally manage the University Fund established under section 53, and more particularly to—

- (a) advise the Cabinet Secretary in matters of university education funding and related policy issues;
- (b) in consultation with the Cabinet Secretary, develop a transparent and fair criteria for allocation of funds to public universities and issue conditional grants to private universities;
- (c) apportion funds to public universities and issuance of conditional grants to private universities in accordance with criteria established;
- (d) in consultation with the Chairpersons of Councils of public universities, propose and establish for approval by the Cabinet Secretary and the Auditor-General the maximum differentiated unit cost for the programmes offered;
- (e) establish the minimum discipline differentiated remuneration for academic staff of universities, which shall be fair and globally competitive, and advise the Government accordingly;
- (f) mobilize and receive funds for purposes of the Fund from the Government, donors, and from any other source; and
- (g) exercise any other power for the better performance of its functions under this Act.

(5) The Trustees may invest any unutilized balances in the Fund in such manner as trustees may lawfully invest public funds.

(6) Deleted by Act No. 48 of 2016, s. 20.

(7) Deleted by Act No. 48 of 2016, s. 20.

[Act No. 48 of 2016, s. 20.]

54A. Director of the Fund

(1) There shall be a Director who shall be the chief executive officer of the Fund, appointed by the Cabinet Secretary on recommendation of the Board of Trustees of the Fund following a competitive recruitment process, and who shall serve for a term of five years, which may be renewed for one further term.

(2) The Director of the Fund shall be responsible for the day to day management of the affairs of the Fund.

- (3) A person shall be qualified for appointment as a Director if such person—
- (a) is a Kenyan citizen;
 - (b) holds a degree or its equivalent from a university recognized in Kenya in the field of banking, education, law, finance, economics or management;
 - (c) has at least ten years' relevant professional experience in the management of a public or private institution; and
 - (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

[Act No. 48 of 2016, s. 21.]

54B. Staff of the Fund

(1) The Fund may employ such other officers and staff as it may deem necessary for the performance of its functions under this Act.

(2) All appointments under this section shall take into account gender equity, ethnic and regional balance in accordance with the Constitution.

[Act No. 48 of 2016, s. 21.]

54C. Financial provisions

The provisions relating to the finances of the Commission as set out in sections 31, 32 and 33 shall apply, *mutatis mutandis* to the finances of the Fund.

[Act No. 48 of 2016, s. 21.]

PART VIII – THE KENYA UNIVERSITIES AND COLLEGES CENTRAL PLACEMENT SERVICE

55. Establishment of Kenya Universities and Colleges Central Placement Service

(1) There shall be a Service to be known as the Kenya Universities and Colleges Central Placement Service.

(2) The Service shall be a body corporate with perpetual succession and a common seal and capable, in its corporate name, of—

- (a) suing and being sued;
- (b) purchasing, disposing and disposing of movable and immovable property; and
- (c) doing all such other things or acts as may be done by a body corporate.

(3) The Service shall be governed by the Placement Board which shall consist of thirteen members appointed by the Cabinet Secretary as follows—

- (a) a chairperson;
- (b) the Secretary of the Commission;
- (c) the chief executive of the Higher Education Loans Board;
- (d) the chief executive of the TVET Funding Board;
- (e) the chief executive of the TVETA;
- (f) two Vice-Chancellors representing Public Universities;
- (g) two Vice-Chancellors representing Private Universities;

- (h) two representatives of the Kenya Association of Technical Institutions;
- (i) the Principal Secretary in the Ministry responsible for higher education; and
- (j) the Principal Secretary in the Ministry responsible for finance.

(4) The Service shall establish a Secretariat in such manner as it may deem appropriate, which shall be at such place as the Service shall determine.

(5) The Placement Board shall in the performance of its functions under this Act uphold equity and balanced access to University and College education and develop suitable criteria to promote affirmative action, and other strategies as may be approved the by Government.

56. Functions of Placement Board

(1) The functions of the Board shall be to—

- (a) co-ordinate the placement of the government sponsored students to universities and colleges;
- (b) disseminate information on available programmes, their costs, and the areas of study prioritized by the Government;
- (c) collect and retain data relating to university and college placement;
- (d) advise the Government on matters relating to University and college student placement;
- (e) develop career guidance programmes for the benefit of students; and
- (f) perform any other function assigned to it under this Act.

(2) The Placement Board shall in the performance of its functions promote equity and access to university and college education, by among other things, developing criteria for affirmative action for the marginalized, the minorities and persons with disabilities.

(3) The placement Board shall establish criteria to enable students access the courses for which they applied taking into account the students' qualifications and listed priorities.

57. Independent admissions

Notwithstanding any other provisions of this Part, a university or college may independently admit students to its programmes in accordance with its approved admissions criteria.

58. Secretary, staff of Placement Service

The provisions relating to the appointment of the Secretary and staff members of the Commission as set out in sections 9 and 12 shall apply, *mutatis mutandis*, to the appointment of the Director and staff members of the Placement Service.

59. Finances of the Placement Service

The provisions relating to the financial provisions of the Commission as set out in sections 30, 31, 32 and 33 shall apply *mutatis mutandis*, to the finances of the Service.

59A. Meaning of the word "college"

In this Part, "college" means an institution established under the Technical and Vocational Education and Training Act, 2013 (No. 29 of 2013) or any other public training institution of higher learning established under an Act of Parliament.

[Act No. 48 of 2016, s. 22.]

PART IX – MISCELLANEOUS**60. General functions of a university council**

A University Council shall have the necessary powers for the proper performance of its functions under this Act and in particular, without prejudice to the generality of the foregoing, a university shall have powers to—

- (a) manage, supervise and administer the assets of the university in such a manner as best promotes the purpose for which the university is established;
- (b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the university;
- (c) receive any grants, donations or endowments on behalf of the university and make legitimate disbursements therefrom;
- (d) enter into association, collaboration or linkages with other bodies or organizations within or outside Kenya as the university may consider desirable or appropriate and in furtherance of the purpose for which the university is established; and
- (e) open a banking account or accounts for the funds of the university.

61. Display of instruments of accreditation

(1) Every university shall conspicuously display all its instruments of accreditation on its premises in all its colleges and campuses.

(2) Where any instrument of accreditation is revoked under this Act, the university concerned shall, within fourteen days of such revocation, return the original instrument of accreditation to the Commission subject to the provisions of this Act.

[Act No. 48 of 2016, s. 23.]

61A. Form of instrument of accreditation

The instruments of accreditation shall be in the form prescribed in the Third Schedule to this Act.

[Act No. 48 of 2016, s. 24.]

62. Delegation of functions

A university council may delegate to any committee or to any of its members, officers or employees the exercise of its functions or duties under this Act of any other written law.

63. Fair administrative action

(1) In the performance of its functions, a University Council shall uphold the rights of any person who is likely to be affected, and shall—

- (a) inform the person concerned of the nature of the allegations made against that person;

- (b) afford that person adequate time to prepare and present a defence; and
- (c) afford the person the opportunity of being heard in person.

(2) A university council may act on general evidence the character or conduct of the person concerned and shall not be bound by the rules of evidence as set out in the Evidence Act (Cap. 80).

(3) A University council shall expeditiously dispose of all matters before it and in any event, within six months.

(4) No person having a personal interest or outcome in any matter before a university council shall sit as a member of the university or committee hearing the matter.

64. Disclosure of interest

(1) Where a member is directly or indirectly interested in any contract or other matter before the University Council or a committee and is present at a meeting at which the contract or other matter is the subject of consideration, the person shall, at the meeting and as soon as reasonably practicable after the commencement, disclose the interest and shall not take part in the consideration or discussion of, or vote on any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this section shall be recorded in the minutes of the meeting at which it is made.

65. Instruments of Authority

(1) Subject to this Act, a university shall possess a Mace, Seal and Logo as its instruments of Authority.

(2) A common seal of a university shall be kept in such custody as the University may in its Charter direct and shall not be used except in the manner authorized by the university.

(3) All deeds, instruments, contracts and other documents shall be deemed to be duly executed by or on behalf of a university—

- (a) where they are required to be under seal, if sealed with the common seal of the university and authenticated by the Chairperson of the university council and any other officer of a university so authorized by the University in the provisions of its Charter;
- (b) where they are not required to be under seal, if executed in that behalf by a member authorized by the University council in the provisions of the Charter for that purpose.

(4) A deed, instrument, contract or other documents executed in accordance with subsection (3) shall be effective in law to bind a university and its successors and may be varied or discharged in the same manner as that in which it was executed.

66. Protection from personal liability

No matter or thing done by a member of a university or any officer, employee or agent of a university shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the university, render the member, officer, employee

or agent or any person acting under the directions personally liable to any action, claim or demand whatsoever.

[Act No. 18 of 2014, Sch.]

67. Liability for damages

The provisions of section 66 shall not relieve a university of the liability to pay lawful compensation or damages to any person for injury to the person or property.

68. Offences by a university

If an offence under this Act is committed by a university or other body corporate with connivance of or attributable to any officer of the university or any other person who was purporting to act in any such capacity, that the officer or other person shall be guilty of that offence.

69. General penalties

(1) Except as may be expressed to the contrary, any institution which after the commencement of this Act—

- (a) advertises or in any manner holds itself to the public as a university; or
- (b) admits students or conducts courses of programmes of instruction in university education, without the permission of the Cabinet Secretary or the Commission in accordance with this Act, commits an offence and is liable on conviction, to a fine not exceeding one million shillings and in the case of a continuing offence, to sum of fifty thousand shillings per day for every day on which the offence continues, or to imprisonment for a term not exceeding two years or both.

(2) Any person who commits an offence under this Act for which no other penalty is provided shall be liable in the case of a first conviction, to a fine not exceeding one million shillings or a term of imprisonment not exceeding twelve months and or to both.

[Act No. 48 of 2016, s. 25.]

69A. Commission may issue a notice to comply

(1) The Commission may, by notice in writing, require an institution in default of any provision under this Act, regulation, standards and guidelines to comply therewith within a prescribed time and in a prescribed manner.

(2) If any institution served with a notice under sub-section (1) fails to comply therewith, the Commission may close the institution either permanently or until the notice is complied with.

(3) Any person aggrieved by the decision of the Commission under subsection (2) may appeal to the Cabinet Secretary within thirty days of the decision.

[Act No. 48 of 2016, s. 26.]

70. Regulations

(1) The Cabinet Secretary may in consultation with relevant stakeholders make regulations prescribing anything which under this Act may be prescribed and generally for the better carrying out of the objects of and purposes of this Act.

(2) Without prejudice to the generality of the foregoing, regulations under this section may make further provisions on the—

- (a) establishment of public and private universities, technical universities, open universities, university campuses and university constituent colleges;
- (b) issuance, revocation and variation of University Charters;
- (c) implementation of differentiated unit costs, and discipline differentiated remuneration the academic year for the universities;
- (d) continuous accreditation and quality assurance, including programme accreditation;
- (e) procedure for the revoking a Letter of Interim Authority, varying or revoking a Charter and for winding up of Universities; and
- (f) registration of agents of foreign universities.
- (g) procedure for approval of academic programmes by the Commission;
- (h) procedure for recognizing and equating degrees, diplomas and certificates conferred by foreign universities;
- (i) criteria for evaluating internal tools developed by universities for the purpose of assessing quality assurance.

[Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 27.]

PART X – REPEALS AND TRANSITIONAL PROVISIONS

71. Repeal of various Acts

(1) The following Acts are repealed—

- (a) The Universities Act (Cap. 210B);
- (b) The University of Nairobi Act (Cap. 210);
- (c) The Kenyatta University Act (Cap. 210C);
- (d) The Moi University Act (Cap. 210A);
- (e) The Jomo Kenyatta University of Agriculture and Technology Act (No. 8 of 1994);
- (f) The Egerton University Act (Cap. 214);
- (g) The Maseno University Act (No. 7 of 2000); and
- (h) The Masinde Muliro University of Science and Technology Act, 2006 (No. 18 of 2006).

(2) Notwithstanding subsection (1), the following transitional provisions set out in this Part shall apply.

A – Existing Universities

72. Grant of Charter to existing public universities

(1) A public university existing immediately before the commencement of this Act shall be deemed to be a university established under this Act and shall take the steps prescribed under this Act to obtain a Charter within a period of one year after such commencement.

(2) The Charter shall be subject to and construed in accordance with this Act.

73. Existing Charters and Letters of Interim Authority

(1) A private university in possession of a Charter or a Letter of Interim Authority granted under the Universities Act (now repealed) immediately before the commencement of this Act shall upon such commencement, be deemed to have been granted such Charter or letter of Interim Authority under this Act.

74. Existing constituent colleges

Any constituent colleges of universities existing before the commencement of this Act shall upon such commencement continue to be constituent colleges of those universities and may apply for accreditation in accordance with the provisions of this Act, subject to meeting the standards established under this Act.

75. Existing campuses and campus colleges

A campus or a campus college of a university existing before the commencement of this Act shall be deemed to have been established under the provisions of this Act.

76. Chancellors, Vice-Chancellors, Councils

(1) Any person who immediately before the commencement of this Act is a Chancellor of a university shall remain in office for the remaining period of his or her term or for a period not exceeding one year, whichever is less.

(2) Any person who immediately before the commencement of this Act, is a Vice-Chancellor of a public university or Principal of a constituent college of a public university, shall remain in office for the remaining period of his or her term of office.

(3) All Councils of public universities in existence immediately before the commencement of this Act shall remain in office for a period not exceeding six months after which new councils shall be appointed under this Act.

77. Preservation of proceedings and rights of appeal

Any proceedings, instruments and any right of appeal subsisting immediately before the commencement of this Act shall be treated as subsisting by virtue of the corresponding enactment in this Act.

78. Continuance of periods of time

Where a period of time specified in any of the repealed Acts is current at the commencement of this Act, this Act shall have effect as if the corresponding provisions had been in force when that period began to run.

79. Preservation of licenses, certificates and registration

(1) Any register kept, registration effected, certificate issued, notice or information given, return made or other thing done under the repealed Acts which, immediately before the date of commencement of this Act, was in force or effect shall continue in force and have effect as if kept, effected, issued, given, made or done under the corresponding provision of this Act unless expressly repealed.

(2) Any form used and any requirement as to the particulars to be entered in any form used for the purposes of the repealed Act which was in force or effect immediately before the date of commencement of this Act shall continue in force and have effect as though prescribed under this Act until new forms or particulars are prescribed.

80. Transfer of property, assets liabilities and staff

(1) All immovable and movable property and assets which immediately before the commencement of this Act were vested in, or possessed by the institutions established under the repealed Acts shall, by virtue of this section vest in the respective institutions established under this Act without further conveyance transfer or assignment.

(2) All rights, obligations and liabilities which immediately before the commencement of this Act were vested in or imposed on the institutions established under the repealed Acts are deemed to be the rights, obligations and liabilities of the respective institutions established under this Act.

(3) All references to the institutions established under the repealed Acts in any agreement or instrument relating to any property, assets, rights, obligations or liabilities transferred under subsection (1) and (2) and subsisting immediately before the commencement of this Act, shall, unless the context otherwise requires, be read as references to respective institutions established under this Act.

(4) Except as the institutions established under the repealed Acts otherwise direct, all persons who were members of the staff of the institutions established under the repealed Acts shall be members of the staff of respective institutions established under this Act and shall be deemed to have been appointed under this Act on the terms and conditions of service applicable to them immediately before the commencement of this Act.

81. General Savings

(1) All acts, directions, orders, appointments, requirements, authorizations or other things given, taken or done under, and all funds, assets and other property acquired by virtue of the repealed Acts shall, so far as they are not inconsistent with this Act, be deemed to have been given, taken, done or acquired under this Act.

(2) All rules and regulations made under the repealed Acts and in force immediately before the commencement of this Act as long as they are not inconsistent with this Act shall continue to be in force but may be amended or revoked by rules and regulations made under this Act.

(3) All pending disciplinary matters shall be determined as if they were commenced under this Act.

(4) All instruments issued by the institutions established under the repealed Acts and in force immediately before the commencement of this Act shall be deemed to have been issued under this Act.

B – The Commission for Higher Education

82. Interpretation of Part

In this Part—

"appointed day" means the day appointed by the Cabinet Secretary for the coming into operation of this Act;

"former Commission" means the Commission for Higher Education existing immediately before the coming into operation of this Act.

83. Assets and liabilities

(1) On the appointed day—

- (a) all the funds, assets and other property, both movable and immovable, which immediately before such date were vested in the former Commission shall, by virtue of this paragraph, vest in the Commission without further conveyance, transfer or assignment.
- (b) all rights, powers and liabilities which immediately before such day were vested in, imposed on or enforceable against the former Commission shall by virtue of this subsection, be vested in, imposed on or enforceable against the Commission.

- (c) Any reference in any written law or in any document or instrument to the Commission shall, on and after the appointed day, be construed to be a reference to the Commission.
- (d) The annual estimates of the former Commission for the financial year in which the appointed day occurs shall be deemed to be the annual estimates of the Commission for the remainder of that financial year:

Provided that such estimates may be varied by the Commission in such manner as the Cabinet Secretary may approve.

- (e) The administrative directions made by the Commission or by the Cabinet Secretary which are in force immediately before the appointed day shall, on or after such day, have force as if they were directions made by the Commission or the Cabinet Secretary under this Act.

[Act No. 18 of 2014, Sch.]

84. Deleted

Deleted by Act No. 48 of 2016, s. 28.

85. Staff

Any person who is a member of the staff of the former Commission immediately before the appointed day shall be deemed to be a member of staff of the Commission.

FIRST SCHEDULE

[Section 8(5), Act No. 18 of 2014, Sch., Act No. 48 of 2016, s. 29.]

PROVISIONS AS TO THE CONDUCT OF THE BUSINESS AND AFFAIRS OF THE COMMISSION

1. The Commission shall meet as often as necessary for the transaction of business, but not more than four months shall elapse between the date of one meeting and that of the next meeting.
2. The Chairperson may at any time, and shall upon written request by a majority of the members, call a special meeting of the Commission.
3. The Chairperson shall preside at every meeting of the Commission at which he is present, but in the absence of the Chairperson the members present may elect one from among their number to preside.
4. The quorum for a meeting of the Commission shall be five members.
5. Unless a unanimous decision is reached, a decision on any matter before the Commission shall be by a majority of the members present, and in the case of an equality of votes the chairperson or person presiding shall have a casting vote.
6. A member who has a direct or indirect interest in a matter being considered or to be considered by the Commission shall, as soon as the relevant facts regarding the matter come to knowledge of the member, disclose the nature of such interest, and shall not be present during any deliberations on the matter.
7. The Commission shall cause the minutes of all proceedings of its meetings to be recorded and kept, and shall be signed by the chairperson or the person presiding at the meeting.

8. Save as provided in this Schedule the Commission may regulate its own procedure.

SECOND SCHEDULE

[Section 38(1), Act No. 18 of 2018, Sch.]

- 1. Where a vacancy occurs in the office of the Chancellor of a public university, the senate of that university shall, in consultation with key stake holders, identify suitable persons for appointment.
- 2. Five names shall be proposed to the Senate and submitted to the Public Service Commission for shortlisting and identification of three suitable candidates, ranked in order of merit.
- 3. The Public Service Commission shall forward the names of the top three candidates to the Cabinet Secretary for onward transmission to the President, who shall pick one of the persons for appointment as the Chancellor.
- 4. The appointment of the Chancellor by the President shall be by notice published in the *Gazette*.

THIRD SCHEDULE

[Section 61A, Act No. 48 of 2016, s. 30.]

LETTER OF INTERIM AUTHORITY

Pursuant to section 14 of the Universities Act, this day of 20....., the Cabinet Secretary has granted (name of university) a Letter of Interim Authority authorising the university to operate in accordance with the provisions of sections 15, 16 and 17 of this Act.

Signed
Cabinet Secretary.

CHARTER

Pursuant to section 13 of the Universities Act, this day of 20 the Commission accredits (name of university) to be established as a university in accordance with the provisions of this Act.

Signed
Cabinet Secretary.

